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S674

TREATIES AND TOPICS

IN

AMERICAN DIPLOMACY.

BY

FREEMAN SNOW, PH.D., LL.B.

HARVARD UNIVERSITY.

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PART I.

TREATIES AND CONVENTIONS.

I.

EXTRACTS FROM EUROPEAN TREATIES RELATING TO AMERICAN HISTORY.

GREAT BRITAIN AND FRANCE.

TREATY OF PEACE AND FRIENDSHIP, 1713 (UTRECHT).

ARTICLE XII.—"The most Christian king shall take care to have delivered to the queen of Great Britain, on the same day that the ratifications of this treaty shall be exchanged, solemn and authentic letters, or instruments, by virtue whereof it shall appear, that the island of St. Christopher's is to be possessed alone hereafter by British subjects, likewise all Nova Scotia or Acadie, with its ancient boundaries, as also the city of Port Royal, now called Annapolis Royal, and all other things in those parts which depend on the said lands and islands, together with the dominion, propriety, and possession of the said islands, lands, and places, and all right whatsoever, by treaties, or by any other way obtained, which the most Christian king, the crown of France, or any of the subjects thereof, have hitherto had to the said islands, lands, and places, and the inhabitants of the same, are yielded and made over to the queen of Great Britain, and to her crown, forever, as the most Christian king

doth, at present, yield and make over all the particulars above said; and that in such ample manner and form, that the subjects of the most Christian king shall hereafter be excluded from all kind of fishing in the said seas, bays, and other places, on the coasts of Nova Scotia, that is to say, on those which lie towards the east, within thirty leagues, beginning from the island commonly called Sable, inclusively, and thence stretching along towards the south-west."

ARTICLE XIII.—"The island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Britain; and to that end, the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratifications of this treaty, or sooner, if possible, by the most Christian king, to those who have a commission from the queen of Great Britain for that purpose. Nor shall the most Christian king, his heirs and successors, or any of their subjects, at any time hereafter, lay claim to any right to the said island and islands, or to any part of it, or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish; or to resort to the said island, beyond the time necessary for fishing, and the drying of fish. But it shall be allowed to the subjects of France to catch fish, and to dry them on land, in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista to the northern part of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the river of St. Lawrence, and in the gulph of the same name, shall hereafter belong of right to the French, and the most Christian king shall have all manner of liberty to fortify any place or places there."

FRANCE AND SPAIN.

1. The Family Compact, 1761.

This was a treaty of offensive and defensive alliance between France and Spain, signed August 15, 1761, to which the adhesion of the other Bourbon Princes was to be procured.

2. Cession of Louisiana.

By a secret treaty between France and Spain, concluded November 3, 1762, Louisiana and New Orleans were ceded to Spain, the cession being in the nature of a recompense for the loss of Florida, which Spain had ceded to Great Britain by the preliminary treaty of Paris signed the same day.

GREAT BRITAIN AND FRANCE.

Treaty of Paris, February 10, 1763.

Article V.—"The subjects of France shall have the liberty of fishing and drying, on a part of the coasts of the Island of Newfoundland, such as is specified by Article 13 of the Treaty of Utrecht; which article is renewed and confirmed by the present Treaty except what relates to the Island of Cape Breton, as well as to the other Islands and coasts in the mouth and in the Gulph of St. Lawrence. And His Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulph St. Lawrence, on condition that the subjects of France do not exercise the said fishery, but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent, as those of the islands situated in the said Gulph St. Lawrence. And as to what relates to the fishery on the coast of the Islands of Cape Breton out of the said Gulph, the subjects of the Most Christian King shall not be permitted to exercise the said fishery, but at the distance of fifteen leagues from the coast of the Island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and

everywhere else out of the said Gulph, shall remain on the footing of former treaties."

ARTICLE VI.—"The King of Great Britain cedes the Islands of St. Pierre and Miquelon, in full right, to His Most Christian Majesty, to serve as a shelter to the French fishermen; and his said Most Christian Majesty, engages not to fortify the said islands; to erect no buildings upon them, but merely for the convenience of the fishery; and to keep upon them a guard of fifty men only for the police."

ARTICLE VII.—"In order to re-establish peace on solid and durable foundations, and to remove forever all subject of dispute with regard to the limits of the British and French territories on the continent of America; it is agreed, that for the future, the confines between the dominions of His Britannic Majesty, and those of His Most Christian Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence, by a line drawn along the middle of this river, and the lakes Maurepas and Pontchartrain, to the sea; and for this purpose, the Most Christian King cedes in full right, and guarantees to His Britannic Majesty, the river and port of the Mobile, and every thing which he possesses, or ought to possess, on the left side of the river Mississippi, except the town of New Orleans, and the island in which it is situated, which shall remain to France; provided that the navigation of the river Mississippi shall be equally free, as well to the subjects of Great Britain as to those of France, in its whole breadth and length, from its source to the sea, and expressly that part which is between the said island of New Orleans and the right bank of that river, as well as the passage both in and out of its mouth. It is further stipulated, that the vessels belonging to the subjects of either nation shall not be stopped, visited, or subjected to the payment of any duty whatsoever. The stipulations, inserted in the IVth article, in favour of the inhabitants of Canada, shall also take place with regard to the inhabitants of the countries ceded by this article."

GREAT BRITAIN AND FRANCE.

TREATY OF PARIS, SEPTEMBER 3, 1783.

ARTICLE IV.—"His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland, and to the adjacent islands, as the whole were assured to him by the Thirteenth Article of the Treaty of Utrecht; excepting the Islands of St. Pierre and Miquelon, which are ceded in full right, by the present Treaty, to His Most Christian Majesty."

ARTICLE V.—"His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two Nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in fifty degrees North latitude, and His Majesty the King of Great Britain consents on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the Island of Newfoundland, shall extend to the place called Cape Raye, situated in forty-seven degrees, fifty minutes latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht."

ARTICLE VI.—"With regard to the fishery in the Gulph of St. Lawrence, the French shall continue to exercise it conformably to the fifth article of the Treaty of Paris."

BRITISH DECLARATION, SEPTEMBER 3, 1783.

(EXTRACT.)

"The King having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty, will seek every means which shall not only ensure the execution thereof, with his accustomed good faith and punctuality, but will besides give, on his part, all possible efficacy to the principles

which shall prevent even the least foundation of dispute for the future.

"To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting, in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them, upon the coasts of the Island of Newfoundland; and he will, for this purpose, cause the fixed settlements which shall be formed there, to be removed. His Britannic Majesty will give orders, that the French fishermen be not incommoded, in cutting the wood necessary for the repair of their scaffolds, huts, and fishing vessels.

"The thirteenth article of the Treaty with Utrecht, and the method of carrying on the fishery which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there: it shall not be deviated from by either party; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing-vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting, in any manner, the French fishermen, during their fishing, nor injuring their scaffolds during their absence.

"The King of Great Britain, in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations; and that the fishery between the said Islands, and that of Newfoundland, shall be limited to the middle of the channel."

GREAT BRITAIN AND SPAIN.

Treaty of Peace, September 3, 1783.

Article V.—"His Britannic Majesty cedes and guarantees, in full right, to His Catholic Majesty, East Florida, as also West Florida. His Catholic Majesty agrees that the British inhabitants, or others who may have been subjects of the King of Great

Britain in the said countries, may retire in full security and liberty, where they shall think proper, and may sell their estates, and remove their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except on account of debts, or criminal prosecutions; the term limited for this emigration being fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty; but if from the value of the possessions of the English proprietors they should not be able to dispose of them within the said term, then His Catholic Majesty shall grant them a prolongation proportioned to that end. It is further stipulated, that His Britannic Majesty shall have the power of removing from East Florida all the effects which may belong to him whether artillery, or other matters."

TREATY OF ARMED NEUTRALTY BETWEEN THE EMPRESS OF RUSSIA AND THE KING OF DENMARK; ACCEDED TO BY THE KING OF SWEDEN, AND THE STATES-GENERAL OF THE UNITED PROVINCES.

ARTICLE I.—"Their respective majesties are fully and sincerely determined to keep upon the most friendly terms with the present belligerent powers, and preserve the most exact neutrality: they solemnly declare their firm intention to be, that their respective subjects shall strictly observe the Laws forbidding all contraband trade with the powers now being, or that may hereafter be, concerned in the present disputes."

ARTICLE II.—"To prevent all equivocation or misunderstanding of the word Contraband, their imperial and royal majesties declare, that the meaning of the said word is solely restrained to such goods and commodities, as are mentioned under that denomination, in the treaties subsisting between their said majesties and either of the belligerent powers. Her imperial majesty abiding principally by the X. and XI. articles of the treaty of commerce with Great Britain; the conditions therein mentioned, which are founded on the Rights of Nations, being understood to extend to the kings of France and Spain; as there is at present no specific treaty of commerce between

the two latter and the former. His Danish majesty, on his part, regulates his conduct in this particular, by the first article of his treaty with England, and by the 26th and 27th of that subsisting between his said majesty and the king of France, extending the provisions made in the latter to the Catholic king; there being no treaty *ad hoc*, between Denmark and Spain."

ARTICLE III. "And whereas, by this means, the word *contraband*, conformable to the treaties now extant, and the stipulations made between the contracting powers, and those that are now at war, is fully explained; especially by the treaty between Russia and England, of the 20th of June, 1766; between the latter and Denmark, of the 11th of July, 1670; and between their Danish and most Christian majesties, of August 23d, 1642; the will and opinion of the high contracting powers are, that all other trade whatsoever shall be deemed, and remain free and unrestrained.

"By the declaration delivered to the belligerent powers, their contracting majesties have already challenged the privileges founded on Natural Right, whence spring the Freedom of Trade and Navigation, as well as the Right of Neutral Powers: and being fully determined not to depend in future merely on an arbitrary interpretation, devised to answer some private advantages or concerns, they mutually covenanted as followeth:

"1st. That it will be lawful for any ship, whatever, to sail freely from one port to another, or along the coasts of the powers now at war.

"2nd. That all merchandize and effects belonging to the subjects of the said belligerent powers, and shipped on neutral bottoms, shall be entirely free; except contraband goods.

"3d. In order to ascertain what constitutes the blockade of any place or port, it is to be understood to be in such predicament, when the assailing power has taken such a station, as to expose to imminent danger, any ship or ships that would attempt to sail in or out of the said ports.

"4th. No neutral ship shall be stopped, without a material and well-grounded cause: and in such cases, justice shall be done to them, without loss of time; and besides indemnifying, each and every time, the party aggrieved or thus stopped with-

out sufficient cause, full satisfaction shall be given to the high contracting powers, for the insult offered to their flag."

ARTICLE IV.—"In order to protect officially the general trade of their respective subjects, on the fundamental principles aforesaid, her imperial and his royal majesty have thought proper, for effecting such purpose, each respectively to fit out a proportionate rate of ships of war and frigates. The squadron of each of the contracting powers shall be employed in escorting convoys, according to the particular circumstances of the navigators and traders of each nation.

ARTICLE V.—"Should any of the merchantmen belonging to the subjects of the contracting powers, sail in a latitude where there shall be no ships of war of their own nation, and thus be deprived of the protection; in such case, the commander of the squadron belonging to the other friendly power shall, at the request of said merchantmen, grant them sincerely, and *bona fide*, all necessary assistance. The ships of war and frigates, of either of the contracting powers, shall thus protect and assist the merchantmen of the other: provided nevertheless, that, under the sanction of such required assistance and protection, no contraband shall be carried on, nor any prohibited trade, contrary to the Laws of Neutrality."

ARTICLE VI.—"The present convention cannot be supposed to have any relative effect; that is, to extend to the differences that may have arisen since its being concluded, unless the controversy should spring from continual vexations, which might tend to aggrieve and oppress all the European nations."

ARTICLE VII.—"If, notwithstanding the cautions and friendly care of the contracting powers, and their steady adherence to an exact Neutrality, the Russian and Danish merchantmen should happen to be insulted, plundered, or captured by any of the armed ships or privateers, belonging to any of the belligerent powers: in such case, the ambassador or envoy of the aggrieved party, to the offending court, shall claim such ship or ships, insisting on a proper satisfaction, ... and never neglect to obtain a reparation for the insult offered to the flag of his court. The minister of the other contracting power shall at the same time, in the most efficacious and vigorous manner, defend such requisitions, which shall be supported by both parties with unanimity. But in case of any refusal, or even delay in redress-

ing the grievances complained of; then their majesties will retaliate against the power that shall thus refuse to do them justice, and immediately agree together on the most proper means of making well-founded reprisals."

ARTICLE VIII.—"In case either of the contracting powers, or both at the same time, should be in any manner aggrieved or attacked, in consequence of the present convention, or for any reason relating thereto; it is agreed, that both powers will join, act in concert for their mutual defence, and unite their forces, in order to procure to themselves an adequate and perfect satisfaction, both in regard to the insult put upon their respective flags, and the losses suffered by their subjects."

ARTICLE IX.—"This convention shall remain in force for and during the continuance of the present war; and *the obligation enforced thereby, will serve as the ground-work of all treaties that may be set on foot hereafter:* according to future occurrences, and on the breaking out of any fresh maritime wars which might unluckily disturb the tranquillity of Europe. Meanwhile, *all that is hereby agreed upon, shall be deemed as binding and permanent,* in regard both to mercantile and naval affairs; and shall have the force of *Law, in determining the rights of Neutral Nations.*"

ARTICLE X.—"*The chief aim and principal object of the present convention being to secure the Freedom of Trade and Navigation,* the high contracting powers have antecedently agreed, and do engage to give to all other neutral powers free leave to accede to the present treaty, and, after a thorough knowledge of the principles on which it rests, share equally in the obligations and advantages thereof."

ARTICLE XI.—"In order that the powers, now at war, may not be ignorant of the strength and nature of the engagements entered into by the two courts aforesaid, the high contracting parties shall give notice, in the most friendly manner, to the belligerent powers, of the measures by them taken; by which, far from meaning any manner of hostility, or causing any loss or injury to other powers, their only intention is to protect the trade and navigation of their respective subjects."

ARTICLE XII.—"This convention shall be ratified by the contracting powers, and the ratifications interchanged between the parties in due form, within the space of six weeks, from

the day of its being signed, or even sooner, if possible. In witness whereof, and by virtue of the full powers granted us for the purpose, we have put our hands and seals to the present treaty.

"Given at Copenhagen, July the 19th, 1780.

"CHARLES D'OSTEN, called SOKEN.
"J. SCHACK RATLAU.
"A. P. COMTE BERNSTORFF.
"O. THOFT.
"H. EIKSTEDT.

"Acceded to, and signed by the Plenipotentiaries of the court of Sweden, at St. Petersburg, 21st of July, 1780: and by the States-General accepted, November 20th, 1780; and signed at St. Petersburg, January 5th, 1781, with the addition only of article. . . ."

ARTICLE XIII.—"If the respective squadrons, or ships of war, should meet or unite to act in conjunction, the command in chief will be regulated according to what is only commonly practised between the crowned heads and the republic."

II.

TREATIES AND CONVENTIONS WITH EUROPEAN STATES.

PLAN OF TREATIES.

(*Secret Journals of Congress, Foreign Affairs*, II., 6, *September* 17, 1776.)

"Congress took into consideration the plan of treaties to be proposed to foreign nations, with the amendments agreed to by the committee of the whole; and thereupon,

"Resolved. That the following plan of a treaty be proposed to his most christian majesty:

"PLAN OF A TREATY WITH FRANCE.

"There shall be a firm, inviolable, and universal peace, and a true and sincere friendship, between the most serene and mighty prince, Lewis the sixteenth, the most christian king, his heirs and successors, and the United States of America; and the subjects of the most christian king, and of the said states; and between the countries, islands, cities and towns, situate under the jurisdiction of the most christian king, and of the said United States, and the people and inhabitants thereof of every degree; without exception of persons or places. And the terms herein mentioned, shall be perpetual between the most christian king, his heirs and successors, and the said United States."

ARTICLE I.—(The subjects of France to pay no other duties than natives pay, and to enjoy all the rights and privileges in

navigation and commerce which natives enjoy.) "The subjects of the most christian king shall pay no other duties or imposts, in the ports, havens, roads, countries, islands, cities or towns of the said United States, or any of them, than the natives thereof or any commercial companies established by them or any of them shall pay, but shall enjoy all other the rights, liberties, privileges, immunities and exemptions in trade, navigation, and commerce, in passing from one part thereof to another, and in going to and from the same, from and to any part of the world, which the said natives or companies enjoy."

ARTICLE II.—(Reciprocal rights and privileges of American citizens in France.)—"The subjects, people and inhabitants of the said United States, and every of them, shall pay no other duties, or imposts, in the ports, havens, roads, countries, islands, cities or towns of the most christian king, than the natives of such countries, islands, cities or towns of France, or any commercial companies established by the most christian king, shall pay, but shall enjoy all other the rights, liberties, privileges, immunities and exemptions in trade, navigation and commerce, in passing from one port thereof to another, and in going to and from the same, from and to any part of the world, which the said natives or companies enjoy."

ARTICLE III.—(France to retain same rights of fishery in Newfoundland banks and islands, as stipulated in the treaty of Paris, 1763.)—"His most christian majesty shall retain the same rights of fishery on the banks of Newfoundland, and all other rights relating to any of the said islands, which he is entitled to by virtue of the treaty of Paris."

ARTICLE IV.—(France to protect U. S. vessels in her ports and on the high seas near her coasts; and to recover and restore ships taken in her jurisdiction; and her ships of war in convoy shall take U. S. vessels under convoy and protect them, etc.)—"The most christian king shall endeavour, by all the means in his power, to protect and defend all vessels, and the effects belonging to the subjects, people or inhabitants of the said United States, or any of them, being in his ports, havens, or roads, or on the seas near to his countries, lands, cities or towns; and to recover and to restore to the right owners, their agents, or attorneys, all such vessels and effects, which shall be taken within his jurisdiction; and his ships of war, or any

convoys sailing under his authority, shall upon all occasions take under their protection all vessels belonging to the subjects, people, or inhabitants of the said United States, or any of them, and holding the same course or going the same way; and shall defend such vessels as long as they hold the same course, or go the same way, against all attacks, force, and violence, in the same manner as they ought to protect and defend vessels belonging to the subjects of the most christian king."

ARTICLE V.—(Reciprocal of IV.)—"In like manner the said United States, and their ships of war, and convoys sailing under their authority, shall protect and defend all vessels and effects belonging to the subjects of the most christian king; and endeavour to recover and restore them, if taken within the jurisdiction of the said United States, or any of them."

ARTICLE VI.—(Neither shall receive pirates into ports; but shall seize them, and restore property taken by them.)—"The most christian king and the said United States, shall not receive nor suffer to be received, into any of their ports, havens, roads, countries, islands, cities or towns, any pirates or sea robbers, or afford or suffer any entertainment, assistance or provision to be afforded to them; but shall endeavour by all means, that all pirates and sea robbers, and their partners, sharers, and abettors, be found out, apprehended, and suffer condign punishment; and all the vessels and effects piratically taken, and brought into the ports and havens of the most christian king, or the said United States, which can be found, although they be sold, shall be restored, or satisfaction given therefor; the right owners, their agents or attorneys demanding the same, and making the right of property to appear by due proof."

ARTICLE VII.—(France asked to protect U. S. vessels from the depredations of the Barbary pirates.)—"The most christian king shall protect, defend, and secure, as far as in his power, the subjects, people and inhabitants of the said United States, and every of them, and their vessels and effects of every king, against all attacks, assaults, violences, injuries, depredations or plunderings, by or from the king or emperor of Morocco, or Fez, and the states of Algiers, Tunis and Tripoli, and any of them, and every other prince, state and power on the coast of Barbary in Africa, and the subjects of the said king, emperor,

states and powers, and of every of them, in the same manner, and as effectually and fully, and as much to the benefit, advantage, ease and safety of the said United States, and every of them, and of the subjects, people and inhabitants thereof, to all intents and purposes, as the king and kingdom of Great Britain, before the commencement of the present war, protected, defended and secured the people and inhabitants of the said United States, then called British colonies in America, their vessels and effects, against all such attacks, assaults, violences, injuries, depredations and plunderings."

ARTICLE VIII.—(If Great Britain declare war upon France, the United States not to assist Great Britain in any way.)—"If, in consequence of this treaty, the king of Great Britain should declare war against the most christian king, the said United States shall not assist Great Britain in such war, with men, money, ships, or any of the articles in this treaty denominated contraband goods."

ARTICLE IX.—(France is never to possess any part of the North American Continent, nor the islands about the Gulf of St. Lawrence, the intention being that these shall belong to the United States.)—"The most christian king shall never invade, nor, under any pretence, attempt, to possess himself of Labrador, New Britain, Nova Scotia, Acadia, Canada, Florida, nor any of the countries, cities or towns on the continent of North America, nor of the islands of Newfoundland, Cape Breton, St. Johns, Anticosti, nor of any other island lying near to the said continent in the seas, or in any gulph, bay or river; it being the true intent and meaning of this treaty, that the said United States shall have the sole, exclusive, undivided and perpetual possession of the countries, cities and towns on the said continent, and of all islands near to it, which now are or lately were under the jurisdiction of or subject to the king or crown of Great Britain, whenever they shall be united or confederated with the said United States."

ARTICLE X.—(The citizens or inhabitants of neither nation shall fish in places possessed by the other.)—"The subjects, inhabitants, merchants, commanders of ships, masters and mariners, of the states, provinces and dominions of each party, respectively, shall abstain and forbear to fish in all places, possessed, or which shall be possessed by the other party. The

most christian king's subjects shall not fish in the havens, bays, creek, roads, coasts, or places which the said United States hold or shall hereafter hold. . . . And if any ship or vessel shall be found fishing, contrary to the tenor of this treaty, the said ship or vessel, with its lading, proof being made thereof, shall be confiscated."

ARTICLE XI.—(If France gets possession of the British West India Islands, the people of the United States shall have the same rights there as are mentioned in Article II.)—"If in any war the most christian king shall conquer, or get possession of, the islands in the West Indies, now under the jurisdiction of the king or crown of Great Britain, or any of them, or any dominions of the said king or crown, in any other parts of the world, the subjects, people and inhabitants of the said United States, all and every of them, shall enjoy the same rights, liberties, privileges, immunities and exemptions, in trade, commerce and navigation, to and from the said islands and dominions, that are mentioned in the second article of this treaty."

ARTICLE XII.—(No higher duties shall be imposed on exports from French West Indies, etc., to the United States than the lowest imposed on export to France.)—"It is the true intent and meaning of this treaty, that no higher or other duties shall be imposed on the exportation of anything of the growth, production or manufacture of the islands in the West Indies, now belonging, or which may hereafter belong to the most christian king, to the said United States, or any of them, than the lowest that are or shall be imposed on the exportation thereto to France, or to any other part of the world.

ARTICLE XIII.—(No duties shall ever be imposed on the export of molasses from the French West Indies to the United States.)—"It is agreed by and between the said parties, that no duties whatever shall ever hereafter be imposed on the exportation of molasses from any of the islands and dominions of the most christian king in the West Indies, to any of these United States."

ARTICLE XIV.—(Droit d'Aubaine.)—"The subjects, people and inhabitants of the United States, or any of them, being merchants and residing in France, and their property and effects of every kind, shall be exempt from the Droit d'Aubaine."

ARTICLE XV.—(Merchant ships to exhibit passports and certificates.)—"The merchant ship of either of the parties which shall be making into a port belonging to the enemy of the other ally, and concerning whose voyage, and the species of goods on board her, there shall be just grounds of suspicion, shall be obliged to exhibit as well upon the high seas, as in the ports and havens, not only her passports, but likewise certificates, expressly showing, that her goods are not of the number of those which have been prohibited as contraband."

ARTICLE XVI.—(Procedure in the case of contraband goods; free ships, free goods; ships may deliver contraband, and proceed.)—"If, by exhibiting the above certificates, the other party discover there are any of those sorts of goods, which are prohibited and declared contraband, and consigned for a port under the obedience of his enemies, it shall not be lawful to break up the hatches of such ship, or to open any chest, coffers, packs, casks, or any other vessels found therein, or to remove the smallest parcels of her goods, whether such ship belong to the subjects of France or the inhabitants of the said United States, unless the lading be brought on shore, in the presence of the officers of the court of admiralty, and an inventory thereof made: but there shall be no allowance to sell, exchange, or alienate the same in any manner, until after that due and lawful process shall have been had against such prohibited goods, and the courts of admiralty shall, by a sentence pronounced, have confiscated the same; saving always as well the ship itself as any other goods found therein, which by this treaty are to be esteemed free; neither may they be detained on pretence of their being, as it were, infected by the prohibited goods, much less shall they be confiscated as lawful prize. But, if not the whole cargo, but only part thereof, shall consist of prohibited or contraband goods, and the commander of the ship shall be ready and willing to deliver them to the captor who has discovered them; in such case the captor, having received those goods, shall forthwith discharge the ship, and not hinder her by any means freely to prosecute the voyage on which she was bound."

ARTICLE XVII.—(Neutral goods on board ships of the enemy subject to confiscation.)—"On the contrary, it is agreed that whatever shall be found laden by the subjects and inhabitants

of either party, on any ship belonging to the enemy of the other, or to his subjects, although it be not of the sort of prohibited goods, may be confiscated in the same manner as if it belonged to the enemy himself, except such goods and merchandise as were put on board such ship before the declaration of war, or even after such declaration, if so be it were done without the knowledge of such declaration, so that the goods of the subjects or people of either party, whether they be of the nature of such as are prohibited, or otherwise, which, as is aforesaid, were put on board any ship belonging to an enemy before the war, or after the declaration of it, without the knowledge of it, shall no wise be liable to confiscation, but shall well and truly be restored without delay to the proprietors demanding the same; but so as that if the said merchandises be contraband, it shall not be any ways lawful to carry them afterwards to any ports belonging to the enemy."

ARTICLE XVIII.—(Ships of war and privateers of one not to injure citizens of the other.)—"And that more effectual care may be taken for the security of the subjects and inhabitants of both parties, that they suffer no injury by the men-of-war or privateers of the other party, all the commanders of the ships of the most christian king, and of the said United States, and all their subjects and inhabitants, shall be forbid doing any injury or damage to the other side; and if they act to the contrary, they shall be punished; and shall moreover, be bound to make satisfaction for all matter of damage, and the interest thereof, by reparation, under the penalty and obligation of their persons and goods."

ARTICLE XIX.—(Property recaptured from pirates to be restored.)—"All ships and merchandises of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either state, and shall be delivered to the custody of the officers of that port, in order to be restored entire, to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof."

ARTICLE XX.—(Prizes of either may be carried into the ports of the other; but no shelter shall be given by either to prizes from the other.)—"It shall be lawful for the ships of war of either party, and privateers, freely to carry, whithersoever they

please, the ships and goods taken from their enemies, without being obliged to pay any duty to the officers of the admiralty, or any other judges; nor shall such prizes be arrested or seized, when they come to and enter the ports of either party; nor shall the searchers or other officers of those places search the same, or make examination concerning the lawfulness of such prizes; but they may hoist sail at any time, and depart, and carry their prizes to the place expressed in their commissions, which the commanders of such ships of war shall be obliged to show. On the contrary, no shelter or refuge shall be given in their ports to such as shall have made prize of the subjects, people or property of either of the parties; but if such should come in, being forced by stress of weather, or the danger of the sea, all proper means shall be vigorously used that they go out, and retire from thence as soon as possible."

ARTICLE XXI.—(Wrecked vessels to be protected and assisted.)—"If any ships belonging to either of the parties, their subjects, or people, shall within the coasts or dominions of the other, stick upon the sands, or be wrecked, or suffer any other damage, all friendly assistance and relief shall be given to the persons shipwrecked, or such as shall be in danger thereof; and letters of safe conduct shall likewise be given to them for their free and quiet passage from thence, and the return of every one to his own country."

ARTICLE XXII.—(Vessels of either forced by stress of weather or by pursuit of pirates or enemies, into ports of the other, to be protected.)—"In case the subjects and people of either party, with their shipping, whether public and of war, or private and of merchants, be forced through stress of weather, pursuit of pirates or enemies, or any other urgent necessity, for seeking of shelter and harbor, to retreat and enter into any of the rivers, creeks, bays, havens, roads, ports, or shores, belonging to the other party, they shall be received and treated with all humanity and kindness, and enjoy all friendly protection and help; and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals and all things needful, for the sustenance of their persons, or reparation of their ships, and conveniency of their voyage; and they shall no ways be detained or hindered from returning out of the said ports, or roads, but may remove and

depart, when and whither they please, without let or hindrance."

ARTICLE XXIII.—(In the event of war between the two nations, six months to be allowed to merchants for removal.)—"For the better promoting of commerce on both sides, it is agreed, that if a war shall break out between the said two nations, six months after the proclamation of war shall be allowed to the merchants in the cities and towns were they live, for settling and transporting their goods and merchandises; and if anything be taken from them, or any injury be done them, within that time, by either party, or the people or subjects of either, full satisfaction shall be made for the same."

ARTICLE XXIV.—(Citizens of one of the parties not to accept commissions or letters of marque from the enemies of the other.)—"No subjects of the most christian king shall apply for or take any commission, or letters of marque for arming any ship, or ships, to act as privateers against the said United States, or any of them, or against the subjects, people or inhabitants of the said United States, or any of them, or against the property of the inhabitants of any of them, from any prince or state with which the said United States shall be at war. Nor shall any citizen, subject or inhabitant of the said United States, or any of them, apply for or take any commission or letters of marque for arming any ship or ships to act as privateers against the subjects of the most christian king, or any of them, or the property of any of them, from any prince or state with which the said king shall be at war; and if any person, of either nation, shall take such commissions or letters of marque, he shall be punished as a pirate."

ARTICLE XXV.—(Privateers of a state at war with one of the parties shall not fit out vessels in the ports of the other, or sell what they have taken.)—"It shall not be lawful for any foreign privateer, not belonging to the subjects of the most christian king, or citizens of the said United States, who have commissions from any other prince, or state, in enmity with either nation, to fit their ships in the ports of either the one or the other of the aforesaid parties, to sell what they have taken, or in any other manner whatsoever to exchange either ships, merchandises, or any other lading; neither shall they be allowed even to purchase victuals, except such as shall be

necessary for their going to the next port of that prince or state from which they have commissions."

ARTICLE XXVI.—(Citizens of one may trade with the enemies of the others: free ships, free goods, and also persons except soldiers.)—"It shall be lawful for all and singular the subjects of the most christian king, and the citizens, people and inhabitants of the said states, to sail with their ships with all manner of liberty and security, no distinction being made, who are the proprietors of the merchandises laden thereon, from any port to the places of those who now are, or hereafter shall be, at enmity with the most christian king, or the United States. It shall likewise be lawful for the subjects and inhabitants aforesaid to sail with the ships and merchandises aforementioned, and to trade with the same liberty and security from the places, ports and havens of those who are enemies of both, or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy aforementioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same prince, or under several. And it is hereby stipulated, that free ships shall also give a freedom to goods; and that everything shall be deemed to be free and exempt, which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading, or any part thereof, should appertain to the enemies of either; contraband goods being always excepted. It is also agreed, in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both, or either party, they are not to be taken out of that free ship, unless they are soldiers and in actual service of the enemies."

ARTICLE XXVII.—(List of contraband goods; and of free goods).—"This liberty of navigation and commerce shall extend to all kinds of merchandises, excepting those only which are distinguished by the name of contraband; and under this name of contraband or prohibited goods, shall be comprehended arms, great guns, bombs with their fusees and other things belonging to them, fire-balls, gunpowder, match, cannonball, pikes, swords, lances, spears, halberds, mortars, petards, granadoes, saltpetre, muskets, musket-balls, helmets, head-

pieces, breastplates, coats of mail, and the like kind of arms proper for arming soldiers, musket rests, belts, horses with their furniture, and all other warlike instruments whatsoever. These merchandises which follow shall not be reckoned among contraband or prohibited goods, that is to say, all sorts of cloths, and all other manufactures woven of any wool, flax, silk, cotton or any other material whatever, all kinds of wearing apparel, together with the species whereof they are used to be made, gold and silver, as well coined as uncoined, tin, iron, lead, brass, coals, as also wheat and barley, and any other kind of corn and pulse, tobacco, and likewise all manner of spices, salted and smoked flesh, salted fish, cheese and butter, beer, oil, wines, sugars, and all sorts of salt, and in general all provisions which serve for the nourishment of mankind, and the sustenance of life. Furthermore, all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, sail cloth, anchors and any part of anchors, also ships' masts, planks, boards and beams, of what tree soever, and all other things, proper either for building or repairing ships, and all other goods whatsoever, which have not been worked into the form of any instrument or thing prepared for war by land or by sea, shall not be reputed contraband, much less such as have been already wrought and made up for any other use; all which shall wholly be reckoned among free goods; as likewise all other merchandises and things which are not comprehended, and particularly mentioned, in the foregoing enumeration of contraband goods; so that they may be transported and carried in the freest manner, by the subjects of both confederates, even to places belonging to an enemy, such towns and places being only excepted as are at that time besieged, blocked up, or invested."

ARTICLE XXVIII.—(Vessels to carry sea letters and certificates in time of war.)—"To the end that all manner of dissensions and quarrels may be avoided and prevented, on one side and the other, it is agreed, that in case either of the parties hereto should be engaged in a war, the ships and vessels belonging to the subjects or people of the other ally must be furnished with sea letters or passports, expressing the name, property, and bulk of the ship, as also the name and place of habitation of the master or commander of the said ship, that it may appear thereby, that the ship really and truly belongs to the subjects

of one of the parties; which passports shall be made out and granted according to the form annexed to this treaty. They shall likewise be recalled every year; that is, if the ship happens to return home in the space of a year. It is likewise agreed that such ships, being laden, are to be provided not only with passports, as abovementioned, but also with certificates containing the several particulars of the cargo, the place whence the ship sailed, and whither she is bound, that so it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship set sail, in the accustomed form; and if any one shall think it fit or advisable to express in the said certificates the persons to whom the goods on board belong, he may freely do it.

ARTICLE XXIX.—(The case of ships not wishing to unload cargo.) "The ships of the subjects and inhabitants of either of the parties, coming upon any coast belonging to either of the said allies, but not willing to enter into port, or being entered into port, and not willing to unload their cargoes or break bulk, shall not be obliged to give an account of their lading, unless they should be suspected, upon some manifest tokens, of carrying to the enemy of the other ally any prohibited goods called contraband; and in case of such manifest suspicion, the parties shall be obliged to exhibit, in the ports, their passports and certificates in the manner before specified."

ARTICLE XXX.—(The ship of war of one state visiting merchant vessels of the other are to remain out of cannon shot; goods to be examined before being put or board.)—"If the ships of the said subjects, people or inhabitants of either of the parties, shall be met with, either sailing along the coast, or on the high seas, by any ship of war of the other, or by any privateers, the said ships of war or privateers, for the avoiding of any disorder, shall remain out of cannon shot, and may send their boats on board the merchant ship which they shall so meet with, and may enter her to the number of two or three men only, to whom the master or commander of such ship or vessel shall exhibit his passport concerning the property of the ship, made out according to the form inserted in this present treaty; and the ship, when she shall have showed such passport, shall be free and at liberty to pursue her voyage, so as it shall not be lawful

to molest or search her in any manner, or to give her chace or force her to quit her intended course. It is also agreed, that all goods, when once put on board the ships or vessels of either parties, shall be subject to no further visitation; but all visitation or search shall be made beforehand, and all prohibited goods shall be stopped on the spot, before the same be put on board the ships or vessels of the respective states; nor shall either the persons or goods of the subjects of his most christian majesty or the United States, be put under any arrest, or molested by any other kind of embargo for that cause; and only the subject of that state to whom the said goods have been or shall be prohibited, and shall presume to sell or alienate such sort of goods, shall be duly punished for the offence." [1]

FRANCE.

Instructions to Commissioners.

(September, 1776.)

"There is delivered to you herewith a plan of a treaty with his most christian majesty of France, approved of in Congress, on the part of the United States; and you are hereby instructed to use every means in your power for concluding it, conformably to the plan you have received.

"If you shall find that to be impracticable, you are hereby authorized to relax the demands of the United States, and to enlarge their offers agreeably to the following directions:

"If his most christian majesty shall not consent that the inhabitants of the United States shall have the privileges proposed in the second article, then the United States ought not to give the subjects of his most christian majesty the privileges proposed in the first article; but that the United States shall give to his most christian majesty the same privileges, liberties,

[1] With the exception of the first and second articles, which place the citizens of each party on the footing of natives in trading with the other, there is hardly a new idea, or policy in respect to commerce in this plan of treaties. Much of it is taken word for word from the treaty of commerce of 1713 between France and England (Utrecht), and many of the articles appear in even earlier treaties.

and immunities at least, and the like favour in all things which any foreign nation the most favoured shall have—provided, his most christian majesty shall give to the United States the same benefits, privileges and immunities which the most favoured nation now has, uses, or enjoys.

"And, in case neither of these propositions of equal advantages is agreed to, then the whole of the said articles are to be rejected, rather than obstruct the further progress of the treaty.

"The fourth article must be insisted on.

"The seventh article ought to be obtained, if possible; but should be waived, rather than that the treaty should be interrupted by insisting upon it.

"His most christian majesty agreeing, nevertheless, to use his interest and influence to procure passes from the states mentioned in this article for the vessels of the United States upon the Mediterranean.

"The eighth article will probably be attended with some difficulty. If you find his most christian majesty determined not to agree to it, you are empowered to add to it, as follows: —That the United States will never be subject, or acknowledge allegiance, or obedience, to the king, or crown, or parliament of Great Britain; nor grant to that nation any exclusive trade, or any advantages, or privileges in trade, more than to his most christian majesty; neither shall any treaty for terminating the present war between the king of Great Britain and the United States, or any war which may be declared by the king of Great Britain against his most christian majesty, in consequence of this treaty, take effect until the expiration of six calendar months after the negotiation for that purpose shall have been duly notified, in the former instance by the United States to his most christian majesty, and in the other instance by his most christian majesty to the United States; to the end that both these parties may be included in the peace, if they think proper.

"The twelfth and thirteenth articles are to be waived, if you find that the treaty will be interrupted by insisting on them.

"You will press the fourteenth article; but let not the fate of the treaty depend upon obtaining it.

"If his most christian majesty should be unwilling to agree to the sixteenth and twenty-sixth articles, you are directed to

consent that the goods and effects of enemies, on board the ships and vessels of either party, shall be liable to seizure and confiscation.

"The twenty-fifth article is not to be insisted on.

"You will solicit the court of France for an immediate supply of twenty or thirty thousand muskets and bayonets, and a large supply of ammunition and brass field-pieces, to be sent under convoy by France. The United States engage for the payment of the arms, artillery and ammunition, and to indemnify France for the expense of the convoy.

"Engage a few good engineers in the service of the United States.

"It is highly probable that France means not to let the United States sink in the present contest. But as the difficulty of obtaining true accounts of our condition may cause an opinion to be entertained that we are able to support the war on our own strength and resources longer than, in fact, we can do, it will be proper for you to press for the immediate and explicit declaration of France in our favour, upon a suggestion that a re-union with Great Britain may be the consequence of a delay.

"Should Spain be disinclined to our cause, from an apprehension of danger to his dominions in South America, you are empowered to give the strongest assurances, that that crown will receive no molestation from the United States, in the possession of these territories."

FRANCE, 1778.

Treaty of Amity and Commerce.

Concluded February 6, 1778; Ratified by the Continental Congress May 4, 1778; Ratifications exchanged at Paris, July 17, 1778.

"The Most Christian King, and the United States of North America, to wit, New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, willing to fix in an equitable and permanent

manner the rules which ought to be followed relative to the correspondence and commerce which the two parties desire to establish between their respective countries, States, and subjects. His Most Christian Majesty and the said United States have judged that the said end could not be better obtained than by taking for the basis of their agreement the most perfect equality and reciprocity, and by carefully avoiding all those burthensome preferences which are usually sources of debate, embarrassment, and discontent; by leaving, also, each party at liberty to make, respecting commerce and navigation, those interior regulations which it shall find most convenient to itself; and by founding the advantage of commerce solely upon reciprocal utility and the just rules of free intercourse; reserving withal to each party the liberty of admitting at its pleasure other nations to a participation of the same advantages. It is in the spirit of this intention, and to fulfil these views, that his said Majesty having named and appointed for his Plenipotentiary, Conrad Alexander Gerard, Royal Syndic of the city of Strasbourg, Secretary of His Majesty's Council of State; and the United States, on their part, having fully impowered Benjamin Franklin, Deputy from the State of Pennsylvania to the General Congress, and President of the Convention of said State, Silas Deane, late Deputy from the State of Connecticut, to the said Congress, and Arthur Lee, Counsellor at Law; the said respective Plenipotentiaries, after exchanging their powers, and after mature deliberation, have concluded and agreed upon the following articles."

Article I.—(Declaration of Amity.) "There shall be a firm, inviolable and universal peace, and a true and sincere friendship between the Most Christian King, his heirs and successors, and the United States of America; and the subjects of the Most Christian King and of the said United States; and between the countries, islands, cities and towns situate under the jurisdiction of the Most Christian King and of the said United States, and the people and inhabitants of every degree, without exception of persons or places; and the terms hereinafter mentioned shall be perpetual between the Most Christian King, his heirs and successors, and the said United States."

Article II.—"The Most Christian King and the United States engage mutually not to grant any particular favour to other

nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same favour, freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional."

ARTICLES III. and IV.—Mutual agreement not to levy discriminating duties, but on the basis of the most favored nation, instead of on the rights of nations. See Plan of Treaties, II.

ARTICLE V.—Special exemption in respect of certain French tonnage duties.

ARTICLES VI and VII.—Mutual protection afforded to vessels. See Plan of Treaties, IV.

ARTICLE VIII.—The King of France promises to employ his good offices with the Barbary Powers, in favor of the United States. See Plan of Treaties, VII.

ARTICLE IX.— (Fisheries.)—"The subjects, inhabitants, merchants, commanders of ships, masters and mariners of the states, provinces and dominions of each party respectively shall abstain and forbear to fish in all places possessed or which shall be possessed by the other party;" (etc.)

ARTICLE X.— "The United States, their citizens and inhabitants, shall never disturb the subjects of the Most Christian King in the enjoyment and exercise of the right of fishing on the banks of Newfoundland, nor in the indefinite and exclusive right which belongs to them on that part of the coast of that island which is designated by the treaty of Utrecht; nor in the rights relative to all and each of the isles which belong to His Most Christian Majesty; the whole conformable to the true sense of the treaties of Utrecht and Paris."

ARTICLE XI.—(Droit'd Aubaine.)—"The subjects and inhabitants of the said United States, or any one of them, shall not be reputed *aubains* in France, and consequently shall be exempted from the *droit d'aubaine*, or other similar duty, under what name soever. They may by testament, donation or otherwise, dispose of their goods, moveable and immoveable, in favour of such persons as to them shall seem good, and their heirs, subjects of the said United States, residing whether in France or elsewhere, may succeed them *ab intestat*, without being obliged to obtain letters of naturalization, and without

having the effect of this concession contested or impeded under pretext of any rights or prerogative of provinces, cities or private persons; and the said heirs, whether such by particular title, or *ab intestat*, shall be exempt from all duty called *droit detraction*, or other duty of the same kind, saving nevertheless the local rights or duties as much and as long as similar ones are not established by the United States, or any of them. The subjects of the Most Christian King shall enjoy on their part, in all the dominions of the said States, an entire and perfect reciprocity relative to the stipulations contained in the present article, but it is at the same time agreed that its contents shall not effect the laws made, or that may be made hereafter in France against emigrations which shall remain in all their force and vigour, and the United States on their part, or any of them, shall be at liberty to enact such laws relative to that matter as to them shall seem proper." [1]

ARTICLE XII.—Proof of the nationality of merchant vessels passports and certificates.

ARTICLE XIII.—Proceedings in the case of contraband goods. If only a part of the cargo be contraband, the captor may take that part on board his ship, and permit the captured ship to proceed on her voyage. See Plan of Treaties, XVI.

ARTICLE XIV.—Enemy's flag will not protect neutral goods put on board after the declaration of war is known to the owner. See Plan of Treaties, XVII.

ARTICLE XV.—Indemnity guaranteed for injury to vessels. See Plan of Treaties, XVIII.

[1] "The two articles following were originally agreed to, but afterwards rescinded, to wit:

ARTICLE XI.—"It is agreed and concluded that there shall never be any duty imposed on the exportation of the melasses that may be taken by the subjects of any of the United States from the islands of America which belong or may hereafter appertain to His Most Christian Majesty."

ARTICLE XII.—"In compensation of the exemption stipulated by the preceding article, it is agreed and concluded that there shall never be any duties imposed on the exportation of any kind of merchandise which the subjects of His Most Christian Majesty may take from the countries and possessions, present or future, of any of the thirteen United States, for the use of the islands which shall furnish melasses."

ARTICLE XVI.—Proceedings in the case of recapture from pirates. See Plan of Treaties, XIX.

ARTICLE XVII.—(Prizes.) See Plan of Treaties, XX.—"It shall be lawful for the ships of war of either party, and privateers, freely to carry whithersoever they please the ships and goods taken from their enemies, without being obliged to pay any duty to the officers of the admiralty or any other judges; nor shall such prizes be arrested or seized when they come to and enter the ports of either party; nor shall the searchers or other officers of such places search the same, or make examination concerning the lawfulness of such prizes, but they may hoist sail at any time, and depart and carry their prizes to the places expressed in their commissions, which the commanders of such ships of war shall be obliged to show; on the contrary, no shelter or refuge shall be given in their ports to such as shall have made prize of the subjects, people or property of either of the parties; but if such shall come in, being forced by stress of weather, or the danger of the sea, all proper means shall be vigorously used that they go out and retire from thence as soon as possible."

ARTICLE XVIII.—Friendly assistance to be given to shipwrecked persons. See Plan of Treaties, XXI.

ARTICLE XIX.—Asylum to be granted to vessels in distress, whether through stress of weather, pursuit of pirates or enemies, or any other urgent necessity. See Plan of Treaties, XXII.

ARTICLE XX.—In the event of war between the two nations, merchants to have six months in which to remove their goods, etc. See Plan of Treaties, XXIII.

ARTICLE XXI.—Letters of marque not to be taken by the citizens of either party from the enemies of the other. See Plan of Treaties, XXIV.

ARTICLE XXII.—Foreign privateers not allowed to be fitted out or to sell their prizes in the ports of either party. See Plan of Treaties, XXV.

ARTICLE XXIII.—It shall be lawful for the citizens of either nation, being neutral, to trade with the enemies of the other; and free ships shall give freedom to goods, contraband goods always excepted. See Plan of Treaties, XXVI.

ARTICLE XXIV.—Enumeration of contraband goods, and

those that shall be considered free. See Plan of Treaties, XXVI.

ARTICLE XXV.—Proofs of the nationality of vessels. See Plan of Treaties, XXVIII.

ARTICLE XXVI.—See Plan of Treaties, XXIX.

ARTICLES XXVII and XXVIII.—Vessels showing passports, and proceedings in the case of visit and search. See Plan of Treaties, XXX.

ARTICLE XXIX.—(Appointment of Consuls.)—"The two contracting parties grant mutually the liberty of having each in the ports of the other Consuls, Vice-Consuls, Agents, and Commissaries, whose functions shall be regulated by a particular agreement."

ARTICLE XXX.—(Free ports.)—"And the more to favour and facilitate the commerce which the subjects of the United States may have with France, the Most Christian King will grant them in Europe one or more free ports, where they may bring and dispose of all the produce and merchandise of the thirteen United States; and His Majesty will also continue to the subjects of the said States the free ports which have been and are open in the French Islands of America; of all which free ports the said subjects of the United States shall enjoy the use, agreeable to the regulations which relate to them."

ARTICLE XXXI.—(Ratification.)—"The present treaty shall be ratified on both sides, and the ratifications shall be exchanged in the space of six months, or sooner if possible.

"In faith whereof the respective Plenipotentiaries have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty was originally composed and concluded in the French language, and they have thereto affixed their seals.

"Done at Paris this sixth day of February, one thousand seven hundred and seventy-eight.

(Seal.)	"C. A. GERARD.
(Seal.)	"B. FRANKLIN.
(Seal.)	"SILAS DEANE.
(Seal.)	"ARTHUR LEE."

FRANCE, 1778.

TREATY OF ALLIANCE.

Concluded February 6, 1778.: Ratified by the Continental Congress, May 4, 1778. Ratifications exchanged at Paris, July 17, 1778.

"The Most Christian King and the United States of North America, to wit: New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, having this day concluded a treaty of amity and commerce, for the reciprocal advantage of their subjects and citizens, have thought it necessary to take into consideration the means of strengthening those engagements, and of rendering them useful to the safety and tranquillity of the two parties; particularly in case Great Britain, in resentment of that connection and of the good correspondence which is the object of the said treaty, should break the peace with France, either by direct hostilities, or by hindering her commerce and navigation in a manner contrary to the rights of nations, and the peace subsisting between the two Crowns. And His Majesty and the said United States, having resolved in that case to join their councils and efforts against the enterprises of their common enemy, the respective Plenipotentiaries impowered to concert the clauses and conditions proper to fulfil the said intentions, have, after the most mature deliberation, concluded and determined on the following articles: "

ARTICLE I.—(Alliance against Great Britain.)—"If war should break out between France and Great Britain during the continuance of the present war between the United States and England, His Majesty and the said United States shall make it a common cause and aid each other mutually with their good offices, their counsels and their forces, according to the exigence of conjunctures, as becomes good and faithful allies."

ARTICLE II.—(The independence of the United States to be maintained.)—"The essential and direct end of the present defensive alliance is to maintain effectually the liberty, sover-

eignty and independence absolute and unlimited, of the said United States, as well in matters of government as of commerce."

ARTICLE III.—" The two contracting parties shall each on its own part, and in the manner it may judge most proper, make all the efforts in its power against their common enemy, in order to attain the end proposed."

ARTICLE IV.—(Agreement as to concurrent operations.)—" The contracting parties agree that in case either of them should form any particular enterprise in which the concurrence of the other may be desired, the party whose concurrence is desired, shall readily, and with good faith, join to act in concert for that purpose, as far as circumstances and its own particular situation will permit; and in that case, they shall regulate, by a particular convention, the quantity and kind of succour to be furnished, and the time and manner of its being brought into action, as well as the advantages which are to be its compensation."

ARTICLE V.—(Conquests that shall belong to the United States.)—" If the United States should think fit to attempt the reduction of the British power, remaining in the northern parts of America, or the islands of Bermudas, those countries or islands, in case of success, shall be confederated with or dependent upon the said United States."

ARTICLE VI.—(France renounces the possession of certain territories.)—" The Most Christian King renounces forever the possession of the islands of Bermudas, as well as of any part of the continent of North America, which before the treaty of Paris in 1763, or in virtue of that treaty, were acknowledged to belong to the Crown of Great Britain, or to the United States, heretofore called British Colonies, or which are at this time, or have lately been under the power of the King and Crown of Great Britain."

ARTICLE VII.—(Conquests that shall belong to France.) " If His Most Christian Majesty shall think proper to attack any of the islands situated in the Gulph of Mexico, or near that Gulph, which are at present under the power of Great Britain, all the said isles, in case of success, shall appertain to the Crown of France."

ARTICLE VIII.—(Common consent required to conclude a treaty with Great Britain.) " Neither of the two parties shall

conclude either truce or peace with Great Britain without the formal consent of the other first obtained; and they mutually engage not to lay down their arms until the independence of the United States shall have been formally or tacitly assured by the treaty or treaties that shall terminate the war."

ARTICLE IX.—(Mutual renunciation of claims on account of war.)—" The contracting parties declare, that being resolved to fulfil each on its own part the clauses and conditions of the present treaty of alliance, according to its own power and circumstances, there shall be no after-claim of compensation on one side or the other, whatever may be the event of the war."

ARTICLE X.—(Other powers may accede to the alliance.)—" The Most Christian King and the United States agree to invite or admit other powers who may have received injuries from England, to make common cause with them, and to accede to the present alliance, under such conditions as shall be freely agreed to and settled between all the parties."

ARTICLE XI.—(Mutual guarantee of proprietary rights.) " The two parties guarantee mutually from the present time and forever against all other powers, to wit: The United States to His Most Christian Majesty, the present possessions of the Crown of France in America, as well as those which it may acquire by the future treaty of peace: And His Most Christian Majesty guarantees on his part to the United States their liberty, sovereignty and independence, absolute and unlimited, as well in matters of government as commerce, and also their possessions, and the additions or conquests that their confederation may obtain during the war, from any of the dominions now, or heretofore possessed by Great Britain in North America, conformable to the 5th and 6th articles above written, the whole as their possessions shall be fixed and assured to the said States, at the moment of the cessation of their present war with England."

ARTICLE XII.—(Duration of guarantee.)—" In order to fix more precisely the sense and application of the preceding article, the contracting parties declare, that in case of a rupture between France and England the reciprocal guarantee declared in the said article shall have its full force and effect the moment such war shall break out; and if such rupture shall not take place, the mutual obligations of the said guarantee shall not

commence until the moment of the cessation of the present war between the United States and England shall have ascertained their possessions."

ARTICLE XIII.—(Ratifications.)—" The present treaty shall be ratified on both sides, and the ratifications shall be exchanged in the space of six months, or sooner if possible.

" In faith whereof the respective Plenipotentiaries, to wit: On the part of the Most Christian King, Conrad Alexander Gerard, Royal Syndic of the city of Strasbourg, and Secretary of His Majesty's Council of State; and on the part of the United States, Benjamin Franklin, Deputy to the General Congress from the State of Pennsylvania, and President of the Convention of the same State, Silas Deane, heretofore Deputy from the State of Connecticut, and Arthur Lee, Counsellor at Law, have signed the above articles both in the French and English languages, declaring, nevertheless, that the present treaty was originally composed and concluded in the French language, and they have hereunto affixed their seals.

" Done at Paris, this sixth day of February, one thousand seven hundred and seventy-eight.

" C. A. GERARD.
" B. FRANKLIN.
" SILAS DEANE.
" ARTHUR LEE."

FRANCE, 1788.

CONVENTION DEFINING AND ESTABLISHING THE FUNCTIONS AND PRIVILEGES OF CONSULS AND VICE-CONSULS.

Concluded November 14, 1788. Ratifications exchanged at Paris January 6, 1790, although the certificate of exchange was dated January 1, 1790.

ARTICLE I.—As to commissions and exequaturs.

ARTICLE II.—(Privileges of Consuls.) "The Consuls and Vice-Consuls, and persons attached to their functions; that

is to say, their Chancellors and Secretaries, shall enjoy a full and entire immunity for their chancery, and the papers which shall be therein contained. They shall be exempt from all personal service, from soldiers' billets, militia, watch, guard, guardianship, trusteeship, as well as from all duties, taxes, impositions, and charges whatsoever, except on the estate, real and personal, of which they may be the proprietors or possessors, which shall be subject to the taxes imposed on the estates of all other individuals: And in all other instances they shall be subject to the laws of the land as the natives are. Those of the said Consuls and Vice-Consuls who shall exercise commerce, shall be respectively subject to all taxes, charges and impositions established on other merchants. They shall place over the outward door of their house the arms of their sovereign; but this mark of indication shall not give to the said house any privilege of asylum for any person or property whatsoever."

ARTICLE III.— Consuls may appoint agents.

ARTICLE IV.—(Establishment of a chancery.)—"The Consuls and Vice-Consuls respectively may establish a chancery, where shall be deposited the consular determinations, acts and proceedings, as also testaments, obligations, contracts and other acts done by or between persons of their nation, and effects left by deceased persons, or saved from shipwreck. They may consequently appoint fit persons to act in the said chancery, receive and swear them in, commit to them the custody of the seal, and authority to seal commissions, sentences and other consular acts, and also to discharge the functions of notary and register of the consulate."

ARTICLE V.—(Powers and duties of Consuls.)—"The Consuls and Vice-Consuls respectively, shall have the exclusive right of receiving in their chancery, or on board of vessels, the declarations and all the other acts which the captains, masters, crews, passengers, and merchants of their nation may choose to make there, even their testaments and other disposals by last will: And the copies of the said acts, duly authenticated by the said Consuls or Vice-Consuls, under the seal of their consulate, shall receive faith in law, equally as their originals would in all the tribunals of the dominions of the Most Christian King and of the United States. They shall also have, and ex-

clusively, in case of the absence of the testamentary executor, administrator, or legal heir, the right to inventory, liquidate, and proceed to the sale of the personal estate left by subjects or citizens of their nation who shall die within the extent of their consulate; they shall proceed therein with the assistance of two merchants of their said nation, or, for want of them, of any other at their choice, and shall cause to be deposited in their chancery the effects and papers of the said estates; and no officer, military, judiciary, or of the police of the country, shall disturb them or interfere therein, in any manner whatsoever: But the said Consuls and Vice-Consuls shall not deliver up the said effects, nor the proceeds thereof, to the lawful heirs, or to their order, till they shall have caused to be paid all debts which the deceased shall have contracted in the country; for which purpose the creditors shall have a right to attach the said effects in their hands, as they might in those of any other individual whatever, and proceed to obtain sale of them till payment of what shall be lawfully due to them." (Etc.)

ARTICLE VI.—Consuls to receive declarations from captains of losses at sea, etc.

ARTICLE VII.—Power of consuls in the case of shipwreck of vessels of their nation.

ARTICLE VIII.—Consuls shall exercise police over vessels of their respective nations, and jurisdiction in civil matters on board such vessels; but shall not interfere with the police of the port.

ARTICLE IX.—Consuls shall have power to arrest deserters, etc.

ARTICLE X.—In the case of crimes, the courts of the country in which they are committed shall take jurisdiction.

ARTICLE XI.— In the case of criminals who take refuge on vessels of their nation, they may be there arrested.

ARTICLE XII.—(Consuls authorized to settle disputes between citizens of their nation.)—" All differences and suits between the subjects of the Most Christian King in the United States, or between the citizens of the United States within the dominions of the Most Christian King, and particularly all disputes relative to the wages and terms of engagement of the crews of the respective vessels, and all differences, of whatever nature they be which may arise between the privates of the said crews, or be-

tween any of them and their captains, or between the captains of different vessels of their nation, shall be determined by the respective Consuls and Vice-Consuls, either by a reference to arbitrators or by a summary judgment, and without costs. No officer of the country, civil or military, shall interfere therein, or take any part whatever in the matter; and the appeals from the said consular sentences shall be carried before the tribunals of France or of the United States, to whom it may appertain to take cognizance thereof."

ARTICLE XIII.—Tribunals for expediting decisions in commercial affairs.

ARTICLE XIV.—Citizens of both nations to be exempt from personal service.

ARTICLE XV.—Consuls to enjoy the most favoured nation privileges.

ARTICLE XVI.—(Duration of the convention.)—"The present convention shall be in full force during the term of twelve years, to be counted from the day of the exchange of ratifications, which shall be given in proper form, and exchanged on both sides within the space of one year, or sooner if possible.

"In faith whereof, we, Ministers Plenipotentiary, have signed the present convention, and have thereto set the seal of our arms.

"Done at Versailles the fourteenth of November, one thousand seven hundred and eighty-eight."[1]

"L. C. DE MONTMORIN.
"TH. JEFFERSON."

[1] See the Report upon this convention by John Jay, Secretary of Foreign Affairs, July 4, 1785. (*Secret Journals of Congress*, IV., 159.)

FRANCE, 1782.

Contract for the Payment of Loans to His Most Christian Majesty.

Concluded July 16, 1782. Ratified by the Continental Congress, January 22, 1783.

"The King having been pleased to attend to the requests made to him in the name and on behalf of the United Provinces of North America, for assistance in the war and invasion under which they had for several years groaned; and His Majesty, after entering into a treaty of amity and commerce with the said Confederated Provinces, on the 6th of February, 1778, having had the goodness to support them, not only with his forces by land and sea, but also with advances of money, as abundant as they were effectual, in the critical situation to which their affairs were reduced; it has been judged proper and necessary to state exactly the amount of those advances, the conditions on which the King made them, the periods at which the Congress of the United States have engaged to repay them to his Majesty's royal treasury, and, in fine, to state this matter in such a way as for the future to prevent all difficulties capable of interrupting the good harmony which His Majesty is resolved to maintain and preserve between him and the said United States. For executing so laudable a purpose, and with a view to strengthen the bands of amity and commerce which subsist between His Majesty and the said United States; we, Charles Gravier de Vergennes, etc., Counsellor of the King, in all his councils, Commander of his Orders, Minister and Secretary of State, and of his commands and finances, vested with full powers of His Majesty to us given for this purpose: and we, Benjamin Franklin, Minister Plenipotentiary of the United States of North America, in like manner vested with full powers of the Congress of the said States for like present purpose; after duly communicating our respective powers have agreed to the following articles:

"ARTICLE I.—It is agreed and certified that the sums advanced by His Majesty to the Congress of the United States, under the title of a loan, in the years 1778, 1779, 1780, 1781, and the present, 1782, amount to the sum of eighteen millions of livres, money of France, according to the following twenty-one receipts of the above mentioned underwritten Minister of Congress, given in virtue of his full powers, to wit:

"1, 28 February, 1778	750,000	
"2, 19 May, "	750,000	
"3, 3 August, "	750,000	
"4, 1 November, "	750,000	
		3,000,000
"5, 10 June, "	250,000	
"6, 16 September, "	250,000	
"7, 4 October, "	250,000	
"8, 21 December, "	250,000	
		1,000,000
"9, 29 February, 1780	750,000	
"10, 23 May, "	750,000	
"11, 21 June, "	750,000	
"12, 5 October, "	750,000	
"13, 27 November, "	1,000,000	
		4,000,000
"14, 15 February, 1781, ...	750,000	
"15, 15 May, "	750,000	
"16, 15 August, "	750,000	
"17, 1 August, "	1,000,000	
"18, 15 November, "	750,000	
		4,000,000
"19, 10 April, 1782	1,500,000	
"20, 1 July, "	1,500,000	
"21, 5 of the same month	3,000,000	
		6,000,000
"Amounting in the whole to 18 millions, viz.		18,000,000

"By which receipts the said Minister has promised, in the name of Congress, and in behalf of the thirteen United States, to cause to be paid and reimbursed to the royal treasury of

His Majesty, on the 1st of January, 1788, at the house of his grand banker at Paris, the said sum of eighteen millions, money of France, with interest at 5 per cent. per annum." [1]

FRANCE, 1800.

Convention of Peace, Commerce, and Navigation.

Concluded September 30, 1800. Ratifications exchanged at Paris, July 31, 1801. Proclaimed December 21, 1801.

Article I.—Declaration of amity.

Article II.—(Treaties of 1778 and 1788 abrogated.)—"The Ministers Plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negociate further on these subjects at a convenient time, and until they may have agreed upon these points the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows:"

Article III.—(Restoration of public ships.)—"The public ships which have been taken on one part and the other, or which may be taken before the exchange of ratifications, shall be restored."

Article IV.—(Captured property, not definitively condemned, to be restored.)—"Property captured, and not yet definitively condemned, or which may be captured before the exchange of ratifications (contraband goods destined to an enemy's port excepted), shall be mutually restored on the fol-

[1] By subsequent articles of this convention the United States acknowledge the loan of ten million livres, made by Holland to France for their account, in 1781; and stipulate to pay the same in ten annual installments, beginning in 1787. The eighteen million livres mentioned in article I. were to be paid in twelve annual installments, beginning the third year after a peace.

A new loan of six million livres was negotiated with France on February 25, 1783, to be paid in six annual installments, beginning in 1797.

lowing proofs of ownership, viz.: The proof on both sides with respect to merchant ships, whether armed or unarmed, shall be a passport in the form following:

"And this passport will be sufficient without any other paper, any ordinance to the contrary notwithstanding; which passport shall not be deemed requisite to have been renewed or recalled, whatever number of voyages the said ship may have made, unless she shall have returned home within the space of a year. Proof with respect to the cargo shall be certificates, containing the several particulars of the cargo, the place whence the ship sailed and whither she is bound, so that the forbidden and contraband goods may be distinguished by the certificates: which certificates shall have been made out by the officers of the place whence the ship set sail, in the accustomed form of the country. And if such passport or certificates, or both, shall have been destroyed by accident or taken away by force, their deficiency may be supplied by such other proofs of ownership as are admissible by the general usage of nations. Proof with respect to other than merchant ships shall be the commission they bear.

"This article shall take effect from the date of the signature of the present convention. And if, from the date of the said signature, any property shall be condemned contrary to the intent of the said convention, before the knowledge of this stipulation shall be obtained, the property so condemned shall, without delay, be restored or paid for."

ARTICLE V.—(Prosecution of debts authorized). "The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted, in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations."

ARTICLE VI.—(Freedom of commerce and navigation.) "Commerce between the parties shall be free. The vessels of the two nations and their privateers, as well as their prizes, shall be treated in their respective ports as those of the nation the most favoured; and, in general, the two parties shall enjoy in the ports of each other, in regard to commerce and navigation, the privileges of the most favoured nation."

ARTICLE VII.—Property of citizens of one nation in the territory of the other. See Article XI. of the treaty of amity and commerce of 1778.

ARTICLE VIII.—See Plan of Treatise, XXIII.

ARTICLE IX.—(Debts not to be confiscated.) "Neither the debts due from individuals of the one nation to individuals of the other, nor shares, nor monies, which they may have in public funds, or in the public or private banks, shall ever, in any event of war or of national difference, be sequestered or confiscated."

ARTICLE X. permits the appointment of commercial agents (consuls); and

ARTICLE XI. forbids discrimination in duties, as in the former treaty.

ARTICLE XII.—Neutrals are allowed to trade with the enemy in goods not contraband; and further in respect to Blockades, it is stipulated that vessels sailing for a blockaded port in ignorance of the blockade shall not be detained till after a notice is given.

ARTICLE XIII.—Gives a list of contraband goods, agreeing in the main with that in the treaty of 1778, with the exception that horses are not included.

ARTICLES XIV. and XV. declare for "free ships, free goods," and enemy ships, enemy goods, as in the plan of treaties.

ARTICLES XVI., XVII., and XVIII. provide for proofs of the nationality of vessels, protection of neutral ships, in time of war, and regulations for the right of search.

ARTICLE XIX.—Neutral vessels under convoy are not subject to visitation and search.

ARTICLES XX. and XXI. provide certain rules for the protection of persons and property in the case of the capture of neutral vessels.

ARTICLE XXII.—Prize courts are only competent to have cognizance of prize causes.

ARTICLE XXIII.—Provides for indemnification for damages by men of war and privateers.

Commanders of privateers shall hereafter be obliged to give security in the sum of seven thousand dollars, or if the ship be provided with above one hundred and fifty seamen, in the sum of fourteen thousand dollars, to satisfy all damages.

ARTICLE XXIV.—The ships of war of one nation to be admitted with their prizes into ports of the other.

ARTICLE XXV.—See Plan of Treaty, XXV.

ARTICLE XXXVI.—With reference to pirates as in the former treaty.

ARTICLE XXVII.—(Fisheries—Ratification.)—"Neither party will intermeddle in the fisheries of the other on its coasts, nor disturb the other in the exercise of the rights which it now holds or may acquire on the coast of Newfoundland, in the Gulph of St. Lawrence, or elsewhere on the American coast northward of the United States. But the whale and seal fisheries shall be free to both in every quarter of the world.

"This convention shall be ratified on both sides in due form, and the ratifications exchanged in the space of six months, or sooner, if possible.

"In faith whereof the respective Plenipotentiaries have signed the above articles both in the French and English languages, and they have thereto affixed their seals: declaring, nevertheless, that the signing in the two languages shall not be brought into precedent, nor in any way operate to the prejudice of either party.

"Done at Paris the eighth day of Vendémiaire of the ninth year of the French Republic, the thirtieth day of September, anno Domini eighteen hundred.

"J. BONAPARTE.
"C. P. FLEURIEU.
"ROEDERER.
"O. ELLSWORTH.
"W. R. DAVIE.
"W. V. MURRAY."

"The Senate of the United States did, by their resolution of the 3d day of February, 1801, consent to and advise the ratification of the convention: *Provided*, The second article be expunged, and that the following article be added or inserted: 'It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of the ratifications.'

"Bonaparte, First Consul, in the name of the French people, consented on the 31st July, 1801, 'to accept, ratify, and con-

firm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article: *Provided*, That by this retrenchment the two States renounce the respective pretensions, which are the object of the said article.'

"These ratifications, having been exchanged at Paris on the 31st of July, 1801, were again submitted to the Senate of the United States, which on the 19th of December, 1801, declared the convention fully ratified, and returned it to the President for promulgation." [1]

[1] This treaty ended the controversy between France and the United States, begun in 1793, which had resulted in actual hostilities in 1798. The origin of this controversy was the refusal of the United States to carry out the stipulations of the 11th and 12th articles of the treaty of Alliance of 1778, and a difference of interpretation as between the two governments of the rights of consuls under the treaty of 1788. The United States adopted a policy of neutrality in the war between France and England; and refused to permit privateers to be fitted out in American ports, in the interest of France, or to allow French consuls to erect prize courts in the United States. The treaty of 1794 with England ("Jay's treaty") gave further umbrage to France. The 25th article of this treaty gave the same right to English vessels to bring their prizes into American ports that was granted to French vessels by the 17th article of the treaty of commerce of 1778. By Jay's treaty, moreover, England was permitted to include as contraband certain articles that were plainly not of that nature (Article XVIII); and in general the United States, it was asserted, had sacrificed the French alliance in favor of England. From this state of affairs the two nations drifted rapidly into a *quasi* war; and by act of July 7, 1798, Congress declared the previous treaties with France null and void. All attempts to negotiate had failed, until the year 1800, when Napoleon having changed his policy, consented to the negotiation of the treaty of that year.

By striking out the 2d article and accepting Napoleon's proviso, the United States renounced all claims of their citizens for indemnity from France for property illegally captured and condemned before the signing of the treaty; and thereupon virtually assumed the responsibility for the payment of those claims. On the part of France, Napoleon's proviso had the effect of assenting to the abrogation of the previous treaties. The renunciation of claims was therefore an equivalent for the nullification of those treaties. (See Opinion of the Court of Claims delivered by Judge JOHN DAVIS, May 17, 1886.)

FRANCE, 1803.

TREATY FOR THE CESSION OF LOUISIANA TO THE UNITED STATES.

Concluded April 30, 1803. Ratifications exchanged at Washington, October 21, 1803. Proclaimed October 21, 1803.

"The President of the United States of America, and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendémiaire, an 9 (30th September, 1800) relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid, the 27th of October, 1795, between his Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their Plenipotentiaries, to wit: . . . .

ARTICLE I.—"Whereas by article the third of the treaty concluded at St. Ildefonso, the 9th Vendémiaire, an 9 (1st October, 1800), between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows: 'His Catholic Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States.' And whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestable title to the domain and to the possession of the said territory: The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances,

as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with His Catholic Majesty."

ARTICLE II.—"In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks and other edifices which are not private property. The archives, papers and documents, relative to the domain and sovereignty of Louisiana and its dependences, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them."

ARTICLE III.—"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess."

FRANCE, 1803.

CONVENTION FOR PAYMENT OF SIXTY MILLIONS OF FRANCS BY THE UNITED STATES.

ARTICLE I.—"The Government of the United States engages to pay to the French Government in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by another convention for the payment of the debts due by France to citizens of the United States.

ARTICLE II.—"For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum payable half yearly in London, Amsterdam, or Paris, amounting by the half year, to three hundred and thirty-seven thousand

five hundred dollars, according to the proportions which shall be determined by the French Government to be paid at either place; the principal of the said stock to be re-imbursed at the Treasury of the United States, in annual payments of not less than three millions of dollars each, of which the first payment shall commence fifteen years after the date of the exchange of ratifications: this stock shall be transferred to the Government of France, or to such person or persons as shall be authorized to receive it, in three months at most after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the Government of the United States.

"It is further agreed, that if the French Government should be desirous of disposing of the said stock to receive the capital in Europe, at shorter terms, that its measures for that purpose shall be taken so as to favor, in the greatest degree possible, the credit of the United States, and to raise to the highest price the said stock."

FRANCE, 1803.

Convention for Payment of Sums Due by France to Citizens of the United States.

Article I.—"The debts due by France to citizens of the United States, contracted before the 8th of Vendémiaire, ninth year of the French Republic (30th September, 1800), shall be paid according to the following regulations, with interest at six per cent., to commence from the period when the accounts and vouchers were presented to the French Government."

Article II.—"The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present Convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note which fall within the exceptions of the following articles, shall not be admitted to the benefit of this provision."

Article III. "The principal and interests of the said debts shall be discharged by the United States, by orders drawn by

their Minister Plenipotentiary on their treasury; these orders shall be payable sixty days after the exchange of ratifications of the treaty and the conventions signed this day, and after possession shall be given of Louisiana by the commissaries of France to those of the United States."

ARTICLE IV. "It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States, who have been and are yet creditors of France, for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the said convention, 8th Vendémiaire, ninth year (30th September, 1800)."

ARTICLE V.—"The preceding articles shall apply only, 1st, to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than he might have had to the Government of the French Republic, and only in case of insufficiency of the captors; 2d, the debts mentioned in the said fifth article of the convention contracted before the 8th Vendémiaire, an 9th, (30th September, 1800), the payment of which has been heretofore claimed of the actual Government of France, and for which the creditors have a right to the protection of the United States; the said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed: it is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens, who shall have established houses of commerce in France, England or other countries than the United States, in partnership with foreigners, and who by that reason and the nature of their commerce ought to be regarded as domiciliated in the places where such houses exist. All agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of the said Convention, saving, however, to such persons their claims in like manner as if this Treaty had not been made."

FRANCE, 1822.

CONVENTION OF NAVIGATION AND COMMERCE.

Concluded June 24, 1822. Ratification exchanged at Washington, February 12, 1823. Proclaimed February 12, 1823.

ARTICLE I.—"Articles of the growth, produce or manufacture, of the United States, imported into France in vessels of the United States, shall pay an additional duty, not exceeding twenty francs per ton of merchandise, over and above the duties paid on the like articles, also of the growth, produce or manufacture, of the United States, when imported in French vessels."

ARTICLE II.—"Articles of the growth, produce or manufacture, of France, imported into the United States in French vessels, shall pay an additional duty, not exceeding three dollars and seventy-five cents per ton of merchandise, over and above the duties collected upon the like articles, also of the growth, produce or manufacture of France, when imported in vessels of the United States."

ARTICLE III.—"No discriminating duty shall be levied upon the productions of the soil or industry of France, imported in French bottoms into the ports of the United States for transit or re-exportation: nor shall any such duties be levied upon the productions of the soil or industry of the United States imported in vessels of the United States into the ports of France for transit or re-exportation."

ARTICLE V.—"The duties of tonnage, light-money, pilotage, port charges, brokerage and all other duties upon foreign shipping, over and above those paid by the national shipping in the two countries respectively, other than those specified in articles I and II of the present convention, shall not exceed in France, for vessels of the United States, five francs per ton of the vessels American register: nor for vessels of France in the United States, ninety-four cents per ton of the vessels' French passport."

By ARTICLE VII. the treaty was to be in force for two years,

and thereafter until a six-months notice of discontinuance by either party.

And if not discontinued, the extra duties were to be diminished by one-fourth each year, "so long as neither party shall have declared the intention of renouncing it as above stated."

FRANCE, 1831.

Convention Concerning Claims and Duties on Wines and Cottons.

Concluded July 4, 1831. Ratifications exchanged at Washington February 2, 1832. Proclaimed July 13, 1832.

Article I.—"The French Government, in order to liberate itself completely from all the reclamations preferred against it by citizens of the United States, for unlawful seizures, captures, sequestrations, confiscations or destructions of their vessels, cargoes or other property, engages to pay a sum of twenty-five millions of francs to the Government of the United States, who shall distribute it among those entitled, in the manner and according to the rules which it shall determine."

Article II.—"This sum is to be paid in six annual instalments."

Article III and IV.—"The United States agree to pay to France on account of the claims for unlawful seizures, etc., the sum of one million five hundred thousand francs, in six annual instalments."

Article V.—"Claims not provided for by the present convention may be prosecuted in accordance with the laws of the respective countries."

Article VII.—"French wines imported into the United States for consumption shall be subject to a duty not exceeding six cents per gallon for red wine in cask; ten cents for white wine in casks; and twenty-two cents for wines of all sorts in bottles.

"In consideration of this stipulation, which shall be binding on the United States for ten years, the French Government abandons the reclamations which it had formed in relation to

the 8th article of the treaty of session of Louisiana. France agrees, moreover, to levy the same duty on long staple cottons of the United States as on short staple cottons."

GREAT BRITAIN.

INSTRUCTIONS FOR THE TREATY OF PEACE, AUGUST 14, 1783.

(Secret Journals of Congress, II., 225.)

"SIR:

"You will herewith receive a commission, giving you full power to negotiate a treaty of peace with Great Britain, in

[1] The first installment of the French indemnity under this treaty fell due February 2, 1833, but no provision was made for its payment; and on April 18, 1834, the French Chamber of Deputies refused to make the appropriations necessary to carry the treaty into effect. This action of the Chamber of Deputies was followed by a complete rupture of diplomatic relations between the two states; in February, 1835, President Jackson instructed Livingston, the United States minister, to leave Paris, and in consequence the French minister was withdrawn from Washington. A year later, however, the French government announced that it was ready to execute the treaty, and diplomatic relations were accordingly resumed.

In respect of the 8th article of the treaty of cession of Louisiana, France had accused the United States of a breach of faith in granting privileges to English vessels not accorded to those of France. The United States replied that English vessels enjoyed these additional favors by virtue of a reciprocal agreement. The dispute was settled by the 7th article of the present treaty (Bancroft Davis' Notes on France.)

The subsequent treaties with France are as follows:

1. A convention for the extradition of criminals, concluded November 9, 1843, being the first separate extradition convention entered into by the United States. Additional articles were added in 1845, and 1858. (See Extradition Treaties.)

2. A consular convention concluded February 23, 1853. (See Consular Conventions).

3. A convention concerning trade-marks, concluded April 16, 1869. (See Trade-marks).

4. A convention for the settlement of claims concluded January 15, 1880. The claims against France were those arising during the French occupation of Mexico, and the Franco-Prussian war of 1870–1871. The claims against the United States were those arising during the civil war, 1861–1866.

(On the subject of treaties with France generally, see Davis' Notes).

doing which you will conform to the following information and instructions.

1. "The United States are sincerely desirous of peace, and wish by every means, consistent with their dignity and safety to spare the further effusion of blood. They have, therefore, by your commission and these instructions, laboured to remove the obstacles to that event, before the enemy have evidenced their disposition for it. But as the great object of the present defensive war on the part of the allies, is to establish the independence of the United States, and as any treaty whereby this end cannot be obtained must be only ostensible and illusory, you are, therefore, to make it a preliminary article to any negotiation, that Great Britain shall agree to treat with the United States as sovereign, free, and independent.

2. "You shall take especial care also, that the independence of the said states be effectually assured and confirmed by the treaty or treaties of peace, according to the form and effect of the treaty of alliance with his most christian majesty. And you shall not agree to such treaty or treaties, unless the same be thereby so assured and confirmed.

3. "The boundaries of these states are as follows, viz. These states are bounded north by a line to be drawn from the northwest angle of Nova Scotia along the highlands which divide those rivers which empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; thence due west in the latitude forty-five degrees north from the equator to the northwesternmost side of the river St. Lawrence or Cadaraqui; thence straight to the south end of Nepissing; and thence straight to the source of the river Mississippi; west, by a line to be drawn along the middle of the river Mississippi from its source to where the said line shall intersect the thirty-first degree of north latitude; south, by a line to be drawn due east from the termination of the line last mentioned in the latitude of thirty-one degrees north from the equator to the middle of the river Appalachicola, or Catahouchi; thence along the middle thereof to its junction with the Flint river; thence straight to the head of St. Mary's river; and thence down along the middle of St. Mary's river to the

Atlantick ocean: and east, by a line to be drawn along the middle of St. John's river from its source to its mouth in the bay of Fundy, comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other part, shall respectively touch the bay of Fundy and Atlantick ocean. You are, therefore, strongly to contend that the whole of the said countries and islands lying within the boundaries aforesaid, and every citadel, fort, post, place, harbour and road to them belonging, be absolutely evacuated by the land and sea forces of his Britannick majesty, and yielded to the powers of the states to which they respectively belong, in such situation as they may be at the termination of the war. But, notwithstanding the clear right of these states, and the importance of the object, yet they are so much influenced by the dictates of religion and humanity, and so desirous of complying with the earnest request of their allies, that if the line to be drawn from the mouth of the lake Nepissing to the head of the Mississippi cannot be obtained without continuing the war for that purpose, you are hereby empowered to agree to some other line between that point and the river Mississippi; provided that the same shall in no part thereof be to the southward of latitude forty-five degrees, north. And in like manner, if the eastern boundary above described cannot be obtained, you are hereby empowered to agree, that the same shall be afterwards adjusted, by commissioners to be duly appointed for that purpose, according to such line as shall be by them settled and agreed on, as the boundary between that part of the state of Massachusetts Bay, formerly called the province of Maine, and the colony of Nova Scotia, agreeably to their respective rights. And you may also consent, that the enemy shall destroy such fortifications as they may have erected.

"4. Although it is of the utmost importance to the peace and commerce of the United States that Canada and Nova Scotia should be ceded, and more particularly that their equal common right to the fisheries should be guaranteed to them, yet a desire of terminating the war has induced us not to make the acquisition of these objects an ultimatum on the present occasion.

"5. You are empowered to agree to a cessation of hostilities

during the negotiation; provided our ally shall consent to the same; and provided it shall be stipulated that all the forces of the enemy shall be immediately withdrawn from the United States.

"6. In all other matters not above mentioned, you are to govern yourself by the alliance between his most christian majesty and these states; by the advice of our allies; by your knowledge of our interests; and by your own discretion, in which we repose the fullest confidence."

INSTRUCTIONS FOR NEGOTIATING A TREATY OF COMMERCE WITH GREAT BRITAIN, AUGUST 14, 1779.

(*Secret Journals of Congress*, II., 229.)

"SIR,

"You will herewith receive a commission, giving you full power to negotiate a treaty of commerce with Great Britain, in doing which you will consider yourself bound by the following information and instructions:

"1. You will govern yourself principally by the treaty of commerce with his most christian majesty; and as, on one hand, you shall grant no privilege to Great Britain not granted by that treaty to France, so, on the other, you shall not consent to any peculiar restrictions or limitations whatever in favour of Great Britain.

"2. In order that you may be the better able to act with propriety on this occasion, it is necessary for you to know, that we have determined, 1st, that the common right of fishing shall in no case be given up; 2d, that it is essential to the welfare of all these United States, that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the banks of Newfoundland and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said States; 3d, that application shall be made to his most christian majesty to agree to some article or articles for the better securing to these states a share in the said fisheries; 4th, that if, after a treaty of peace with Great Britain, she shall

molest the citizens or inhabitants of any of the United States, in taking fish on the banks and places hereinafter described, such molestation being in our opinion a direct violation and breach of the peace, shall be a common cause of the said states, and the force of the union be exerted to obtain redress for the parties injured; and 5th, that our faith be pledged to the several states, that, without their unanimous consent, no treaty of commerce shall be entered into, nor any trade or commerce carried on with Great Britain, without the explicit stipulation hereinafter mentioned. You are therefore not to consent to any treaty of commerce with Great Britain without an explicit stipulation on her part, not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland and other fisheries in the American seas anywhere, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation. And in the negotiation, you are to exert your most strenuous endeavours to obtain a nearer distance to the gulf of St. Lawrence, and particularly along the shores of Nova Scotia, as to which latter we are desirous that even the shores may be occasionally used for the purpose of carrying on the fisheries by the inhabitants of these states.

"3. In all other matters you are to govern yourself by your own discretion, as shall be most for the interest of these states, taking care that the said treaty be founded on principles of equality and reciprocity, so as to conduce to the mutual advantage of both nations, but not to the exclusion of others." [1]

[1] A motion was made and carried on July 12, 1781, with only three dissenting votes (New Hampshire, Massachusetts, and Connecticut), "that the commission and instructions for negotiating a treaty of commerce between these United States and Great Britain, given to the honorable John Adams on the 29th day of September, 1779, be and they are hereby revoked."

ACT OF THE MASSACHUSETTS LEGISLATURE, OCTOBER 17, 1781.

(*Secret Journals of Congress*, III., 150.)

"Commonwealth of Massachusetts, Oct. 27, 1781.

"It appearing to this court of the highest importance in general, and to this state in particular, that the rights to the fisheries heretofore enjoyed by the subjects of the United States, should in a future settlement of peace be acknowledged and secured to them: Therefore,

"Resolved, That the delegate in Congress for this commonwealth be and they are hereby instructed, to represent to Congress the importance of the fisheries to this state, and to use their utmost influence that instructions be given to the ministers appointed by Congress for negotiating a peace, in the most pressing manner to insist, that the free and unmolested exercise of this right be continued and secured to the subjects of the United States of America, in a future settlement of peace.

"And it is further resolved, That the secretary be and he is hereby directed, to forward the aforegoing resolve without delay to the delegates in Congress for this commonwealth."

REPORT OF COMMITTEE, AUGUST 16, 1782.

(*Secret Journals of Congress*, III., 161.)

A committee of Congress composed of Mr. Lovell, Mr. Carroll, and Mr. Madison, to whom was referred this act of the Massachusetts legislature, together with other papers, submitted a report thereon, January 8, 1782. This report was referred on January 22, 1782, to another committee consisting of Mr. Carroll, Mr. Randolph, and Mr. Montgomery, who reported August 16, 1782, as follows: (Extract).

"1. Our common right to take fish in the North America seas, and particularly in that part of them which goes under the name of the banks of Newfoundland, has its origin in the natural incapacity of the sea to be appropriated.

"The practice of nations hath, for the sake of safety and tranquillity, abridged this freedom of the ocean, by annexing to the coast a reasonable tract of the water; and Great Britain, by availing herself of this usage, may possibly arrogate the exclusive enjoyment of the banks, as appurtenant to the island of Newfoundland.

"These banks, the nearest point of which is thirty-five leagues distant from Cape Race, are too far advanced in the Atlantick to be a dependance of the shores. There has been great division among writers in determining to what extent the sea is to be considered as incidental to the territory which it washes. Some have apportioned one hundred miles, others sixty, and others as much as could be seen from land in a fair day. (See Anderson's Hist. of Commerce, Vol. II. Appendix, 17.)

"If we pass from theory to the stipulations of treaties, we shall find better aid, but by no means uniformity. By better aid, we mean British precedents; for against these, a British king surely will not struggle.

"In the second year of James the First, commissioners were appointed on the part of England and Scotland, to treat of and conclude a union of the two kingdoms. By the articles for the regulation of trade, the sea, for the space of fourteen miles from the coast of Scotland, was reserved to Scotchmen only; and it was reciprocally provided in favour of Englishmen. (See Spotswood's Hist. of Scotland, 483, and II. Anderson, Appendix, 17.)

"Should this example be thought to lose the force of its application, from having been the agreement of the subjects of one and the same prince, a letter may be quoted from Secretary Stanton to Lord Carlton, the English ambassador at the Hague, bearing date the 21st of January, 1618. In it the ambassador is commanded to urge the states-general, in the name of King James, to publish a placard prohibiting their subjects to fish within fourteen miles of his coasts until the main business should be finally accommodated by commissioners.

"The treaty of Paris, 1763, to which his most christian majesty as well as his Britannick majesty was a party, excludes the French from the exercise of the fishery in the gulf of St. Lawrence only within three leagues from the shore, extending the distance round Cape Breton to fifteen leagues.

"By inspecting the ancient treaties between England and

the dukes of Britanny and Burgundy, we shall find that the portion of the sea which is supposed to belong to the coast is so far from being increased beyond fourteen miles, or even three leagues, that the liberty of fishing in every part thereof is asserted. See treaties between Henry Sixth, and the duchess of Burgundy, Edward Fourth, and Francis, duke of Britanny; Henry Seventh, and Philip fourth, arch-duke of Austria; and duke of Burgundy and Henry Eighth and Charles Fifth, emperor and duke of Burgundy.

"Had the kings of England esteemed the fisheries the property of the crown, they would not have admitted aliens to a promiscuous fishing with their own subjects without some valuable consideration, or an acknowledgment by way of *salvo jure*. But, instead of a proceeding like this, they have in a succession of ages deliberately omitted to challenge to themselves the sole right of the fisheries.

"Queen Elizabeth too, being involved in a dispute with the king of Denmark concerning the fishery at Wardhuys, near the North Cape, instructs her plenipotentiaries to deny that the property of the 'sea at any distance whatsoever is consequent to the banks.' The king of Denmark in his reply does not attempt to establish what she had thus denied, but rests his exclusive claims upon the authority of old treaties between the two crowns. See Rymer's Foedera, tom. 16th, p. 425.

"Thus it appears, upon strict principles of natural law, the sea is unsusceptible of appropriation; that a species of conventional law has annexed a reasonable district of it to the coast which borders on it; and that in many of the treaties to which Great Britain has acceded, no distance has been assumed for this purpose beyond fourteen miles.

"Were these rules then allowed to influence the pretensions of Great Britain with respect to the banks of Newfoundland, they would be readily condemned. Nor could they be supported, were the sea appendant to the shore as far as thirty leagues, the greatest distance, perhaps, which has at any time been ceded to the king of England by treaty.

"Nations may indeed, either by positive contract, or by long and silent acquiescence under exclusion, renounce their privileges in the sea. But the United States have not only never disclaimed their right of fishing therein, but have been in the

constant enjoyment of it during the existence of British government, and occasionally so ever since the Revolution.

"It deserves attention, that the fisheries furnish the inhabitants of a considerable part of the United States with an important proportion of their subsistence, and the means of their commerce. Should they lose this resource by the accomplishment of independence, an event from which very different expectations have been cherished, and which ought to bestow equal advantages on all who have laboured equally in giving birth to it, such a loss cannot fail to be attended with disappointment and mortifying comparisons.

. . . . . .

"2. With respect to the boundaries of the states. The patent to the council of Plymouth, bearing date the 18th of November, 1620, is the patent from which the eastern states proceed.

"New Hampshire claims under the royal commission appointing Benning Wentworth, Esquire, governor of that province, on the 13th July, in the fifteenth year of the reign of George the Second.

"Massachusetts claims under the charter granted by William and Mary, on the 17th October, 1691. The treaty of Paris fixes the Mississippi as the western limit of the old colony of Massachusetts Bay, which is one of the colonies incorporated by that charter. See old charter of 4th March, 1628–9.

"The charter of April 23, 1662, granted by Charles the Second to Winthrop and others, is the ground of the territorial claims of Connecticut. The treaty of Paris is allowed to restrict that state also to the Mississippi.

"On the 8th July, 1662, the same prince granted the charter under which Rhode Island claims.

"New York assigns, as sources of her title, the grant from Charles Second to the duke of York, in 1663, the capitulation of the Dutch in the same year, the treaty of Westminster, 1674, and the renewal or confirmation of the duke's grant immediately after the treaty. This state adds, that the lands on the west side of Connecticut river belong to it under the farther (right) accruing by the subjection of the Five Nations, the native proprietors; and that the country, as far northward as the river St. Lawrence, and westward without known limits, is

the property of New York, as having been formerly possessed by those tribes of Indians and their tributaries. The treaties with those nations in 1684, 1701, 1726, 1744, and 1754, are particularly referred to.

"On the 23d June, 1664, the duke of York conveyed, out of his aforesaid grant to Lord Berkeley and Sir George Carteret, the limits which New Jersey claims. Upon this ground, and the resignation of the government into the hands of the crown on the 14th August, 1703, is the title of this state built.

"Pennsylvania claims under the charter granted by Charles the Second, on the 4th of March, 1681–2, to William Penn.

"Delaware claims under two grants from the duke of York to William Penn, on the 24th August, 1683.

"On the 20th June, 1632, Charles the First granted to Lord Baltimore the limits which Maryland claims.

"Virginia claims under the charter granted by James First, on the 23d May, 1609, to the treasurer and company, the resumption of the country into the hands of the king, and the charter of Charles Second to the colony of Virginia, on the 10th October, 1676. The treaty of Paris marks its western boundary.

"North Carolina and South Carolina claim jointly in the first instance under the charter of 1662, to Clarendon and others, and its confirmation in 1664, with an extension of limits. The British statute of 1729, enabling the king to pay the consideration of the surrender of the proprietors, makes a material point in their case. The separate claims of these two states depend upon the act which divided them. The treaty of Paris defines the western boundary of each.

"The first grant on which Georgia relies, is that made to the trustees on the 8th June, 1732, and limited to the west by the treaty of Paris. The second grant is the proclamation of 1763.

"Were the lands included within these limits merely such as were granted to individuals and settled, or granted and not settled, at the time of the Revolution, they could not be brought into controversy. For no question can arise concerning boundaries until the recognition of independence; and this event, by deposing the king of Great Britain from the rank of lord paramount and chief magistrate of America, destroys the only principles by which lands falling within the two preceding de-

scriptions could return into his power. But the views, interests and conduct of his Britannick majesty forbid us to expect that he will acknowledge the territory remaining ungranted at the era of independence to be, in like manner, the property of the United States, or of the particular states within the limits of which it is comprised.

"It is therefore incumbent on us to show—

"First, That the territorial rights of the thirteen United States, while in the character of British colonies, were the same with those defined, in the instructions given to Mr. J. Adams on the day of August, 1779; and,

"Secondly, That the United States, considered as independent sovereignties, have succeeded to those rights; or,

"Thirdly, That if the vacant lands cannot be demanded upon the preceding grounds, that is, upon the titles of individual states, they are to be deemed to have been the property of his Britannick majesty immediately before the Revolution, and to be now devolved upon the United States collectively taken."

GREAT BRITAIN, 1783.

Definitive Treaty of Peace.

Concluded September 3, 1783. Ratified by the Continental Congress January 14, 1784. Proclaimed January 14, 1784.

"In the name of the Most Holy and Undivided Trinity.

"It having pleased the Divine Providence to dispose the hearts of the most serene and most potent Prince George the Third, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, Duke of Brunswick and Luneburg, Arch-Treasurer and Prince Elector of the Holy Roman Empire, &c., and of the United States of America, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore; and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantage and mutual convenience, as may promote and secure to both perpetual peace

and harmony: And having for this desirable end already laid the foundation of peace and reconciliation, by the provisional articles, signed at Paris, on the 30th of Nov'r, 1782, by the commissioners empowered on each part, which articles were agreed to be inserted in and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain and the said United States, but which treaty was not to be concluded until terms of peace should be agreed upon between Great Britain and France, and His Britannic Majesty should be ready to conclude such treaty accordingly; and the treaty between Great Britain and France having since been concluded, His Britannic Majesty and the United States of America, in order to carry into full effect the provisional articles above mentioned, according to the tenor thereof, have constituted and appointed, that is to say, His Britannic Majesty on his part, David Hartley, esqr., member of the Parliament of Great Britain; and the said United States on their part, John Adams, esqr., late a commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the State of Massachusetts, and chief justice of the said State, and Minister Plenipotentiary of the said United States to their High Mightinesses the States-General of the United Netherlands; Benjamin Franklin, esq're, late Delegate in Congress from the State of Pennsylvania, president of the convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles; John Jay, esq're, late president of Congress, and chief justice of the State of New York, and Minister Plenipotentiary from the said United States at the Court of Madrid, to be the Plenipotentiaries for the concluding and signing the present definitive treaty; who, after having reciprocally communicated their respective full powers, have agreed upon and confirmed the following articles:

Article I.—"His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims

to the Government, proprietary and territorial rights of the same, and every part thereof."

ARTICLE II.—"And that all disputes which might arise in future, on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are, and shall be their boundaries, viz.: From the northwest angle of Nova Scotia, viz.: that angle which is formed by a line drawn due north from the source of Saint Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut River; thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraquy; thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the river Appalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River; and thence down along the middle of St. Mary's River to the Atlantic Ocean. East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of

Fundy to its source, and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia."

ARTICLE III.—"It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulph of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlements, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground."

ARTICLE IV.—"It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all *bona fide* debts heretofore contracted."

ARTICLE V.—"It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective States, to provide for the restitution of all estates, rights and properties which have been confiscated, belonging to real British subjects, and also of the estates, rights and properties of persons resident in districts in the possession of His Majesty's arms, and

who have not borne arms against the said United States. And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months, unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties as may have been confiscated; and that Congress shall also earnestly recommend to the several States a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail. And that Congress shall also earnestly recommend to the several States, that the estates, rights and properties of such last mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the *bona fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements or otherwise, shall meet with no lawful impediment in the prosecution of their just rights."

ARTICLE VI.—"That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons for, or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued."

ARTICLE VII.—"There shall be a firm and perpetual peace between His Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities, both by sea and land, shall from henceforth cease; All prisoners on both sides shall be set at liberty, and His Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons and fleets from the said United States,

and from every post, place and harbour within the same; leaving in all fortifications the American artillery that may be therein; And shall also order and cause all archives, records, deeds and papers, belonging to any of the said States, or their citizens, which, in the course of the war, may have fallen into the hands of his officers, to be forthwith restored and deliver'd to the proper States and persons to whom they belong."

ARTICLE VIII.—"The navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain, and the citizens of the United States."

ARTICLE IX.—"In case it should so happen that any place or territory belonging to Great Britain or to the United States, should have been conquer'd by the arms of either from the other, before the arrival of the said provisional articles in America, it is agreed, that the same shall be restored without difficulty, and without requiring any compensation."

ARTICLE X.—"The solemn ratifications of the present treaty, expedited in good and due form, shall be exchanged between the contracting parties, in the space of six months, or sooner if possible, to be computed from the day of the signature of the present treaty. In witness whereof, we the undersigned, their Ministers Plenipotentiary, have in their name and in virtue of our full powers, signed with our hands the present definitive treaty, and caused the seals of our arms to be affixed thereto.

"Done at Paris, this third day of September, in the year of our Lord one thousand seven hundred and eighty-three.

"D. HARTLEY.
"JOHN ADAMS.
"B. FRANKLIN.
"JOHN JAY." [1]

[1] Immediately after the conclusion of peace disputes began to arise between the two countries. The United States complained of infractions of the treaty on the part of Great Britain, inasmuch as 3000 negroes had been carried away by the British fleet, in violation of the 7th article of the treaty; and that British troops were not withdrawn from the western posts. These complaints were met by the assertion that the negroes carried away had been freed by the British commanders during the war, and did not, therefore, come under the stipulations of the

GREAT BRITAIN, 1794.

ARTICLE I.—Declaration of amity.

ARTICLE II.—Withdrawal of British forces.

ARTICLE III.—(Commerce and navigation.)—It is stipulated by this article that commerce by land, and inland navigation between the two countries in America, shall be free. But this agreement does not extend to the admission of vessels into the seaports, harbors, bays or creeks of the two nations; nor to rivers below the highest port of entry. "The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties."

Further, there are to be no discriminating duties on account of nationality.

ARTICLE IV.—(Survey of the Mississippi.)—"Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the

treaty; and in respect to the withdrawal of troops, that it had been delayed on account of the failure of the United States to carry out the provisions of the treaty in respect of British debts (Article IV). and the confiscation of the property of Tories (Articles V. and VI.) Some of the States had passed laws impeding the collection of these debts, and confirming the confiscation which had been made. Under the Confederation, treaties were not the "law of the land," and were not binding upon the States. But under the Constitution this defect was remedied, and the British creditor could go into the federal courts and collect his debt in spite of any adverse law of a State. (The case of Ware *v.* Hylton.)

Other causes of complaint on the part of the United States were the impressment of American seamen, and the alleged inciting of Indians to hostilities against the United States. When the war broke out between England and France, in 1793, a new cause of dispute arose from the action of the first-named State in detaining American produce bound for France. In this critical state of affairs, Washington decided to make a final attempt at a peaceable solution of the difficulties. To this end Chief Justice JAY was commissioned as envoy extraordinary for the purpose of negotiating a treaty with England (April 19, 1794). Besides the subjects of dispute mentioned above, there were others growing out of a difference of interpretation of the 2d article of the treaty of peace respecting boundaries.

treaty of peace between His Majesty and the United States; it is agreed that measures shall be taken in concert between His Majesty's Government in America and the Government of the United States, for making a joint survey of the said river from one degree of latitude below the falls of St. Anthony, to the principal source or sources of the said river, and also of the parts adjacent thereto; and that if, on the result of such survey, it should appear that the said river would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed, by amicable negotiation, to regulate the boundary line in that quarter, as well as all other points to be adjusted between the said parties, according to justice and mutual convenience, and in conformity to the intent of the said treaty."

ARTICLE V.—Provides for the appointment of three commissioners to determine the St. Croix river.

ARTICLE VI.—(British creditors.)—"Whereas it is alleged by divers British merchants and others, His Majesty's subjects, that debts, to a considerable amount, which were *bona fide* contracted before the peace, still remain owing to them by citizens or inhabitants of the United States, and that by the operation of various lawful impediments since the peace, not only the full recovery of the said debts has been delayed, but also the value and security thereof have been, in several instances impaired and lessened," etc.

For the purpose of ascertaining the amount of any such losses and damages, five commissioners were to be appointed to adjudicate upon these debts. Two of these commissioners to be appointed by Great Britian, two by the United States, and the fifth by the unanimous voice of the other four.

ARTICLE VII.—(American claims.)—Provides for a board of five commissioners to ascertain and adjudicate upon the claims of American citizens for losses by illegal captures by British cruisers during the war then going on.

"ARTICLE VIII.—Stipulation in respect of the expenses of commissioners mentioned in the preceding articles.

ARTICLE IX.—No discrimination in land tenures.

ARTICLE X.—(Debts and moneys not to be confiscated in time of war.)—"Neither the debts due from individuals of the one nation to individuals of the other, nor shares, nor monies, which they may have in the public funds, or in the public or private

banks shall ever in any event of war or national differences be sequestrated or confiscated, it being unjust and impolitic that debts and engagements contracted and made by individuals, having confidence in each other and in their respective Governments, should ever be destroyed or impaired by national authority on account of national differences and discontents."

ARTICLE XII.—(Trade with the British West Indies.)—United States citizens are permitted to carry to the British West Indies, in their own vessels, not being above the burthen of seventy tons, goods, being of the growth, manufacture or produce of the United States, which it is lawful to carry to those islands from the said States in British vessels.

And in the same manner the citizens of the United States may carry away in their said vessels to the United State such articles, being of the growth, manufacture or produce of said islands, as may be carried thence in British vessels.

"Provided always, that the said American vessels do carry and land their cargoes in the United States only, it being expressly agreed and declared that, during the continuance of this article, the United States will prohibit and restrain the carrying any molasses, sugar, coffee, cocoa or cotton in American vessels, either from His Majesty's islands or from the United States to any part of the world except the United States, reasonable sea-stores excepted. Provided, also, that it shall and may be lawful, during the same period, for British vessels to import from the said islands into the United States, and to export from the United States to the said islands, all articles whatever, being of the growth, produce or manufacture of the said islands, or of the United States respectively, which now may, by the laws of the said States, be so imported and exported. And that the cargoes of the said British vessels shall be subject to no other or higher duties or charges, than shall be payable on the same articles if so imported or exported in American vessels.

"It is agreed that this article, and every matter and thing therein contained, shall continue to be in force during the continuance of the war in which His Majesty is now engaged; and also for two years from and after the date of the signature of the preliminary or other articles of peace, by which the same may be terminated."

ARTICLE XIII.—(East India Trade.)—Vessels of the United States are permitted by this article to trade with the British East Indies, without any discriminating tonnage duties, or other duties, provided that they shall not carry any article exported from the said territories "to any port or place except to some port or place in America." . . . .

ARTICLE XIV.—(Trade with the British dominions in Europe.)—With the British dominions in Europe, there is to be entire freedom of commerce and navigation, with no discriminating duties of any kind.

ARTICLE XVI.—(Consuls.)—Consuls may be appointed for the protection of trade; but they shall be amenable to the laws of their place of residence.

ARTICLE XVII.—Relates to captures or detentions of neutral vessels.

ARTICLE XVIII.—(Contraband.)—"In order to regulate what is in future to be esteemed contraband of war, it is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war, by land or sea, such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket-rests, bandoliers, gunpowder, match, saltpetre, ball, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse-furniture, holsters, belts, and generally all other implements of war, as also timber for ship-building, tar or rozin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted; and all the above articles are hereby declared to be just objects of confiscation whenever they are attempted to be carried to an enemy.

"And whereas the difficulty of agreeing on the precise cases in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed that whenever any such articles so becoming contraband, according to the existing laws of nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the captors, or, in their default, the Government under whose authority they act,

shall pay to the masters or owners of such vessels the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention." . . . .

ARTICLE XIX.—Regulations for the protection of citizens from men-of-war, or privateers. Privateers to give security, etc. See Plan of Treaties, XVIII.

ARTICLE XX.—See Plan of Treaties, XIX.

ARTICLE XXI.—Subjects or citizens of the one party shall not accept commissions from a foreign State at war with the other. See Plan of Treaties, XXIV.

ARTICLE XXII.—Reprisals shall not be authorized, until a statement of grievances has been made.

ARTICLE XXIII.—Regulation of rights of ships of war in foreign ports.

ARTICLE XXIV.—Foreign privateers. See Plan of Treaties, XXV.

ARTICLE XXV.—Ships of war may enter with their prizes the ports of either country. See Plan of Treaties, XX.

ARTICLE XXVI.—In case of war between the two nations the citizens or subjects of one residing in the other shall be allowed to remain unmolested so long as they remain peaceable; or they shall have twelve months in which to remove.

ARTICLE XXVII.—(Extradition.)—Persons charged with the crimes of murder or forgery in one State and fleeing to the other shall be delivered up on demand.

ARTICLE XXVIII.—(Limitation of the treaty.)—The first ten articles shall be permanent, and the subsequent articles, except the twelfth, shall be limited in duration to twelve years, to be computed from the day of the exchange of ratifications.

GRENVILLE.
JOHN JAY.

ADDITIONAL ARTICLE.

"It is further agreed, between the said contracting parties, that the operation of so much of the twelfth article of the said treaty as respects the trade which his said Majesty thereby consents may be carried on between the United States and his islands in the West Indies, in the manner and on the terms and conditions therein specified, shall be suspended."[1]

[1] In accordance with the provisions of the 5th article, the commissioners met at Halifax, in March, 1798, and determined the river St. Croix, but left unsettled the place of its source; this was left in dispute till 1842.

The commission provided for by the 6th article in respect to British debts, met in Philadelphia, and disposed of a number of claims, but on account of a disagreement the sessions of the commission were discontinued in 1798. On the 19th of March, 1798, Congress appropriated three millions of dollars for the payment of the awards up to that time. The remaining claims were settled by a convention signed in London by Rufus King, January 8, 1802, the United States agreeing to pay 600,000 pounds sterling.

The commission provided by the 7th article met in London, in 1796, and after many disputes and interruptions, finished its work the 24th of February, 1804. The awards against Great Britain amounted to about 1,284,177 pounds sterling, those against the United States to nearly 200,000 pounds (See Davis's notes, on Great Britain.)

When the commercial articles of the Jay treaty were about to expire in 1806, a new treaty was negotiated with England by Monroe and Pinckney; but because it contained no clause abandoning the claim to the right of "impressment," Jefferson declined to submit it to the Senate for its approval.

GREAT BRITAIN, 1814.

TREATY OF PEACE AND AMITY.

Concluded December 24, 1814. Ratifications exchanged at Washington February 17, 1815. Proclaimed February 18, 1815.

ARTICLE I.—(Declaration of amity—restoration of territory.)—All territory and places, except certain islands in Passamaquoddy Bay, to be restored, "and without causing any destruction or carrying away any of the artillery or other public property originally captured in the said ports or places, and which shall remain therein upon the exchange of ratifications of this treaty, or any slaves or other private property."

All archives, records, deeds, etc., taken by either party to be restored.

The islands mentioned to remain in the possession of the occupier at the date of ratification until a decision thereon in accordance with the fourth article of this treaty.

ARTICLE II.—Hostilities to cease upon the ratification of the treaty, and prizes taken after that date to be restored, but with a time allowance for the intelligence of the peace to reach various parts of the seas of the world.

ARTICLE III.—Prisoners to be restored.

ARTICLE IV.—(Boundaries—islands.)—Provides for the appointment of two commissioners to settle the disputed question of the Passamaquoddy islands "in conformity with the true intent of the said treaty of peace of one thousand seven hundred and eighty three." If the commissioners cannot agree, the matter to be referred to a friendly sovereign or State for decision.

ARTICLE V.—(Northeastern Boundary.)—Whereas neither that point of the highlands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the Powers as the northwest angle of Nova Scotia, nor the northwesternmost head of Connecticut River, has yet been ascertained; and whereas that part of the boundary line be-

tween the two dominions of the two Powers which extends from the source of the river St. Croix directly north to the above-mentioned northwestern angle of Nova Scotia, thence along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean to the northwesternmost head of Connecticut River, thence down along the middle of that river to the forty-fifth degree of north latitude; thence by a line due west on said latitude until it strikes the river Iroquois or Cataraquy, has not yet been surveyed: it is agreed that for these several purposes two Commissioners shall be appointed, sworn and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in the present article. . . . . The said Commissioners shall make a map of the said boundary, and annex to it a declaration under their hands and seals, certifying it to be the true map of the said boundary, and particularizing the latitude and longitude of the northwest angle of Nova Scotia, of the northwesternmost head of Connecticut River, and of such other points of the said boundary as they may deem proper. . . . . In the event of the said two Commissioners differing. . . . . reference to a friendly sovereign or State shall be made in all respects as in the latter part of the fourth article.

ARTICLE VI.—(Boundary from river Iroquois or Cataraquy —St. Lawrence—to Lake Superior.)—To be referred to two commissioners, as in the preceding article.

ARTICLE VII.—(Boundary between Lake Superior and the Lake of the Woods.)—To be referred to the two commissioners named in the preceding article, with like conditions.

ARTICLE VIII.—Refers to details and proceedings of the various commissions mentioned in the four preceding articles.

ARTICLE IX.—Hostilities with Indians to cease.

ARTICLE X.—(Abolition of the Slave trade.)—"Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice, and whereas both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object."

ARTICLE XI.—(Ratification.) Ratifications to be exchanged in four months.

"In faith whereof we, the respective Plenipotentiaries, have signed this treaty, and have thereunto affixed our seals.

"Done, in triplicate, at Ghent, the twenty-fourth day of December, one thousand eight hundred and fourteen.[1]

"GAMBIER.
"HENRY GOULBURN.
"WILLIAM ADAMS.
"JOHN QUINCY ADAMS.
"J. A. BAYARD.
"H.
"JONA. RUSSELL.
"ALBERT GALLATIN."

GREAT BRITAIN, 1815.

CONVENTION TO REGULATE COMMERCE AND NAVIGATION.

Concluded July 3, 1815. Ratifications exchanged at Washington December 22, 1815.

ARTICLE I. and II.—(Commerce between the United States and British possessions in Europe.)—Commerce and navigation between the United States and British possessions in Europe to be free, with no discriminating duties of any kind. Compare with Articles XIV. and XV. of the treaty of 1794.

ARTICLE III.—(East India trade.)—Similar to Article XIII. of the treaty of 1794, except that certain East India ports are designated.

American vessels may touch for refreshments, but not for commerce, "at the Cape of Good Hope, the island of St. Helena, or such other places as may be in the possession of Great Britain, in the African or Indian seas."

[1] The commissioners provided for by the fourth article met in New York, and completed their work in November, 1817.

Those under the 6th article completed their work, and so reported in June, 1822.

ARTICLE IV.—Consuls may be appointed. See Article XVI of the treaty of 1794.

ARTICLE V.—(Duration of the convention—ratification.)—To be binding for four years from the date of signature; and to be ratified within six months.

Signed by

JOHN QUINCY ADAMS.
H. CLAY.
ALBERT GALLATIN.
FREDERICK JOHN ROBINSON.
HENRY GOULBURN.
WILLIAM ADAMS.

DECLARATION RELATING TO ST. HELENA.

"The undersigned, His Britannick Majesty's Charge d'Affaires in the United States of America, is commanded by His Royal Highness the Prince Regent, acting in the name and on the behalf of His Majesty, to explain and declare, upon the exchange of the ratifications of the convention concluded at London on the third of July of the present year, for regulating the commerce and navigation between the two countries, that, in consequence of events which have happened in Europe subsequent to the signature of the convention aforesaid, it has been deemed expedient, and determined, in conjunction with the allied sovereigns, that St. Helena shall be the place allotted for the future residence of General Napoleon Bonaparte, under such regulations as may be necessary for the perfect security of his person; and it has been resolved, for that purpose, that all ships and vessels whatever, as well British ship and vessels as others, excepting only ships belonging to the East India Company, shall be excluded from all communication with, or approach to, that island.

"It has therefore become impossible to comply with so much of the third article of the treaty as relates to the liberty of touching for refreshment at the island of St. Helena, and the ratifications of the said treaty will be exchanged under the explicit declaration and understanding that the vessels of the

United States cannot be allowed to touch at, or hold any communication whatever with, the said island, so long as the said island shall continue to be the place of residence of the said Napoleon Bonaparte.

" ANTHONY ST. JNO. BAKER.

" Washington, November 24, 1815." [1]

GREAT BRITAIN, 1817.

Arrangement as to the Naval Force to be Respectively Maintained on the American Lakes.

In communication of Mr. Bagot, British minister in Washington, to Mr. Rush, Secretary of State, April 28, 1817, and in the reply of Mr. Rush, April 29, 1817, an agreement was made between the two governments to limit the naval force to be maintained on the Great Lakes respectively to the following vessels :—

" On Lake Ontario to one vessel not exceeding one hundred tons burden and armed with an eighteen-pound cannon.

" On the Upper Lakes to two vessels not exceeding the like burden each, and armed with like force.

" And on the waters of Lake Champlain to one vessel not exceeding like burden and armed with like force.

" All other armed vessels on these Lakes, shall be forthwith dismantled, and no other vessels of war shall be there built or armed.

" If either party should hereafter be desirous of annulling this stipulation and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice."

[1] This treaty was renewed, in 1827, for ten years, and thereafter until a twelve months' notice by either party, subsequent to the 20th of October, 1828, for its abrogation.

GREAT BRITAIN, 1818.

Convention Respecting Fisheries, Boundary, and Restoration of Slaves.

Concluded October 20, 1818. Ratifications exchanged at Washington January 30, 1819. Proclaimed January 30, 1819.

Article I.—(Extent of right of fishing defined.)—"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly on the southern coast of Labrador, to and through the Streights of Belleisle and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company: And that the American fishermen shall also have liberty forever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on, or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America

not included within the above-mentioned limits; Provided however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

ARTICLE II.—(Boundary from the Lake of the Woods to the Stony Mountains.) "It is agreed that a line drawn from the most northwestern point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or, if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west along and with the said parallel shall be the line of demarcation between the territories of the United States, and those of His Britannic Majesty, and that the said line shall form the northern boundary of the said territories of the United States, and the southern boundary of the territories of His Britannic Majesty, from the Lake of the Woods to the Stony Mountains."

ARTICLE III.—(Boundary west of Stony Mountains in dispute.) It is agreed, that any country that may be claimed by either party on the northwest coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two Powers: it being well understood, that this agreement is not to be construed to the prejudice of any claim, which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country; the only object of the high contracting parties, in that respect, being to prevent disputes and differences amongst themselves."

ARTICLE IV.—Convention of 1815 continued for ten years.

ARTICLE V.—(Slaves carried away by British forces.) The question of indemnity for slaves carried away by British forces,

contrary to the stipulation of Article I. of the treaty of Ghent, to be referred to some friendly sovereign or State for decision.

ARTICLE VI.—Ratification.

Signed by,

ALBERT GALLATIN.
RICHARD RUSH.
FREDERICK JOHN ROBINSON.
HENRY GOULBURN.[1]

[1] In accordance with the 5th article of this convention, an agreement was entered into by the two governments and Russia, July 12, 1822, by which the question of indemnity for slaves carried away in violation of the first article of the treaty of Ghent, 1814, was to be referred to the Emperor of Russia as arbitrator. This agreement or convention was signed at St. Petersburg by Nesselrode, Capodistrias, Henry Middleton, and Charles Bagot.

The award of the Emperor of Russia, based upon the construction of the text of the first article of the treaty of Ghent was :

"That the United States of America are entitled to a just indemnification, from Great Britain, for all private property carried away by the British forces; and as the question regards slaves more especially, for all such slaves as were carried away by the British forces, from the places and territories of which the restitution was stipulated by the treaty, in quitting the said places and territories;

"That the United States are entitled to consider, as having been so carried away, all such slaves as may have been transported from the above-mentioned territories on board of the British vessels within the waters of the said territories, and who, for this reason, have not been restored;

"But that, if there should be any American slaves who were carried away from territories of which the first article of the treaty of Ghent has not stipulated the restitution to the United States, the United States are not to claim an indemnification for the said slaves."

Difficulties having arisen in the execution of this award, by a subsequent convention, concluded at London, November 13, 1826, by Albert Gallatin, William Huskisson, and Henry Addington, Great Britain agreed to pay to the United States the sum of 1,204,960 dollars, in lieu of, and in full satisfaction for all claims, etc., under the decision of the convention of 1822.

1827.

By a convention concluded at London, August 6, 1827, by Albert Gallatin, Chas. Grant, and Henry Addington, the two governments agreed to extend indefinitely the stipulations of the 3d article of the convention

GREAT BRITAIN, 1842.

TREATY TO SETTLE AND DEFINE BOUNDARIES; FOR THE FINAL SUPPRESSION OF THE AFRICAN SLAVE-TRADE; AND FOR THE GIVING UP OF CRIMINALS FUGITIVE FROM JUSTICE.

Concluded August 9, 1842. Ratifications exchanged at London, October 13, 1842. Proclaimed November 10, 1842.

ARTICLE I.—(Northeastern Boundary settled.)—"It is hereby agreed and declared that the line of boundary shall be as follows: Beginning at the monument at the source of the river St. Croix as designated and agreed to by the Commissioners under the fifth article of the treaty of 1794, between the Governments of the United States and Great Britain; thence, north, following the exploring line run and marked by the surveyors of the two Governments in the years 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the river St. John, and to the middle of the channel thereof; thence, up the middle of the main channel of the said river St. John, to the mouth of the river St. Francis; thence, up the middle of the channel of the said river St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook: thence, southwesterly, in a straight line, to a point on the northwest branch of the river St. John, which point shall be ten miles distant from the main branch of the St.

of 1818; but the convention was subject to abrogation after October 20, 1828, by either party giving twelve months' notice. Claims to territory west of the Rocky Mountains were not to be affected by this convention. On April 27, 1846, Congress authorized the President, at his discretion, to give the notice required by this convention for its abrogation.

In this same year, September 29, 1827, a convention was concluded between the two governments, as provided for by the 5th article of the treaty of Ghent, to refer the differences regarding the northeastern boundary to the arbitration of a friendly State. The question was accordingly referred to the King of the Netherlands. His award, however, was satisfactory to neither party, and was rejected by both. The dispute was finally settled by the treaty of 1842.

John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river St. Lawrence from those which fall into the river St. John, then, the said point shall be made to recede down the said northwest branch of the river St. John, to a point seven miles in a straight line from the said summit or crest; thence, in a straight line, in a course about south, eight degrees west, to the point where the parallel of latitude of 46° 25′ north intersects the southwest branch of the St. John's; thence, southerly, by the said branch, to the source thereof in the highlands at the Metjarmette portage; thence, down along the said highlands which divide the waters which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence, down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British province of Canada on the other; and from said point of intersection, west, along the said dividing line, as heretofore known and understood, to the Iroquois or St. Lawrence River."

Article II.—Description of boundary line.

Article III.—Navigation of the St. John to be free to those of either party dwelling on the upper waters of the river, for all produce not manufactured, etc.

Article IV.—Prior grants of land in the disputed territory to be held valid.

Article V.—Distribution of the "disputed territory fund."

Article VI.—Two commissioners to be appointed to mark the boundary line between the St. Croix and St. Lawrence rivers.

Article VII.—Certain waters in the St. Lawrence, Detroit, and St. Clair rivers to be free to both parties.

Article VIII.—(Suppression of the Slave-Trade.)—"The parties mutually stipulate that each shall prepare, equip, and maintain in service on the coast of Africa a sufficient and adequate squadron or naval force of vessels of suitable numbers

and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries for the suppression of the slave-trade, the said squadrons to be independent of each other, but the two Governments stipulating, nevertheless, to give such orders to the officers commanding their respective forces as shall enable them most effectually to act in concert and co-operation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article, copies of all such orders to be communicated by each Government to the other, respectively."

ARTICLE IX.—Remonstrances to be made with other powers within whose dominions a market for slaves is found.

ARTICLE X.—(Extradition of Criminals).—See Treaties of Extradition.

ARTICLE XI.—(Duration of the treaty.)—The eighth article of this treaty shall be in force for five years from the date of the exchange of the ratifications, and afterwards until one or the other party shall signify a wish to terminate it. The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

ARTICLE XII.—(Ratifications.)

Signed by
DANL. WEBSTER.
ASHBURTON.

GREAT BRITAIN, 1846.

TREATY IN REGARD TO LIMITS WESTWARD OF THE ROCKY MOUNTAINS.

Concluded June 15, 1846. Ratifications excharged at London, July 17, 1846. Proclaimed August 5, 1846.

ARTICLE I.—(Boundary line west of the Rocky Mountains.)—"From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United

States and those of her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island; and thence southerly through the middle of the said channel, and of Fuca's Straits, to the Pacific Ocean: Provided, however, that the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties."

ARTICLE II.—(Navigation of the Columbia.)—The great northern branch of the Columbia, from the point where it intersects the forty-ninth parallel of north latitude to the point where said branch meets the main stream of the Columbia, shall be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, as also the Columbia from that point to its mouth, subject to regulations not inconsistent with the present treaty.

ARTICLE III.—The possessory rights of British subjects in the territory south of the 49th parallel to be respected.

ARTICLE IV.—(Farms and lands belonging to the Puget's Sound, Agricultural Company.)—"The farms, lands, and other property of every description belonging to the Puget's Sound Agricultural Company, on the north side of the Columbia River, shall be confirmed to the said company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States Government should signify a desire to obtain possession of the whole, or of any part thereof, the property so required shall be transferred to the said Government, at a proper valuation, to be agreed upon between the parties."

ARTICLE V.—Ratifications to be exchanged at London, within six months. Signed at Washington, June 15, 1846, by

JAMES BUCHANAN.
RICHARD PACKENHAM.[1]

[1] A dispute subsequently arose between the two governments as to the true meaning of Article I. of this treaty in respect to the channel between Vancouver's Island and the main land. The British government insisted that the Rosario Straits formed the cannel intended by the treaty, whereas the United States insisted that the Chanal de Haro was the proper

GREAT BRITAIN, 1850.

CONVENTION RELATIVE TO A SHIP-CANAL BY WAY OF NICARAGUA, COSTA RICA, THE MOSQUITO COAST, OR ANY PART OF CENTRAL AMERICA.

Concluded April 19 1850. Ratifications exchanged at Washington, July 4, 1850. Proclaimed July 5, 1850.

ARTICLE I.—"The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have, to or with any State or people for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection, or influence that either may possess, with any State or Government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the citizens or subjects of the other."

ARTICLE II.—"Vessels of the United States or Great Britain traversing the said canal shall, in case of war between the con-

channel. The question was referred, by the 34th article of the treaty of 1871, to the Emperor of Germany as arbitrator, who subsequently decided the question in favor of the American claim. (October 21, 1872.)

tracting parties, be exempted from blockade, detention, or capture by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said canal as may hereafter be found expedient to establish."

ARTICLE III.—"In order to secure the construction of the said canal, the contracting parties engage that, if any such canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local government or governments through whose territory the same may pass, then the persons employed in making the said canal, and their property used or to be used for that object, shall be protected, from the commencement of the said canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure, or any violence whatsoever."

ARTICLE IV.—"The contracting parties will use whatever influence they respectively exercise with any State, States or Governments possessing, or claiming to possess, any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such States or Governments to facilitate the construction of the said canal by every means in their power; and furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free ports, one at each end of the said canal."

ARTICLE V.—"The contracting parties further engage that when the said canal shall have been completed they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said canal, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both Governments, or either Government, if both Governments or either Government should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the

traffic thereupon as are contrary to the spirit and intention of this convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee without first giving six months' notice to the other."

ARTICLE VI.—"The contracting parties in this convention engage to invite every State with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other, to the end that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated. And the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans, for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations; and should any differences arise as to right or property over the territory through which the said canal shall pass, between the States or Governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties."

ARTICLE VII.—"It being desirable that no time should be unnecessarily lost in commencing and constructing the said canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities,

and on such principles as accord with the spirit and intention of this convention; and if any persons or company should already have, with any State through which the proposed ship-canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object, and the said persons or company shall moreover, have made preparations and expended time, money, and trouble on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim over every other person, persons, or company to the protection of the Governments of the United States and Great Britain, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements and producing evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the proposed enterprize then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question."

ARTICLE VIII.—"The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other praticable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms,

shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford."

ARTICLE IX.—" The ratifications of this convention shall be exchanged at Washington within six months from this day, or sooner if possible.

"In faith whereof we, the respective Plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

"Done at Washington the nineteenth day of April, anno Domini one thousand eight hundred and fifty.

(Seal.) "JOHN M. CLAYTON."
(Seal.) "HENRY LYTTON BULWER."

1853.

CONVENTION FOR THE SETTLEMENT OF CLAIMS, FEBRUARY 8, 1853.

By this convention, the contracting parties agree that all claims on the part of corporations, companies, or private individuals of each State, upon the government of the other, which may have been presented since the signature of the treaty of Ghent, and which remain unsettled, etc, shall be referred to two commissioners, one to be appointed by each government. In the event of a disagreement, the commissioners are to refer the matter in dispute to an umpire chosen by them.

GREAT BRITAIN, 1854.

TREATY EXTENDING THE RIGHT OF FISHING AND REGULATING COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES AND THE BRITISH POSSESSIONS IN NORTH AMERICA.

Concluded June 5, 1854. Ratifications exchanged at Washington, September 9, 1854. Proclaimed September 11, 1854.

ARTICLE I.—(British American fisheries opened to citizens of the United States.) "It is agreed by the high contracting parties that in addition to the liberty secured to the United States

Fishermen by the above-mentioned convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the coasts and shores of those colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coast in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that the salmon and shad fisheries, and all fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen."

The remainder of this article provides for the appointment of commissioners to settle disputes, and for an umpire in case of the disagreement of the commissioners.

ARTICLE II.—(Rights of British subjects in American fisheries.)—British subjects to have similar rights in fisheries on the eastern coast of the United States, north of the 36th degree of north latitude.

ARTICLE III.—(Reciprocal free-trade in certain articles.)—" It is agreed that the articles enumerated in the schedule hereunto annexed, being the growth and produce of the aforesaid British colonies or of the United States, shall be admitted into each country respectively free of duty: Grain, flour, and breadstuffs, of all kinds; animals of all kinds; fresh, smoked, and salted meats; cotton-wool, seeds, and vegetables; undried fruits dried fruits, fish of all kinds; products of fish, and of all other creatures living in the water; poultry, eggs; hides, furs, skins, or tails, undressed; stone or marble, in its crude or unwrought state; slate; butter, cheese, tallow; lard, horns, manures; ores of metals, of all kinds; coal; pitch, tar, turpentine, ashes; timber and lumber of all kinds, round, hewed, and sawed, un-

manufactured in whole or in part; firewood; plants, shrubs, and trees; pelts, wool; fish-oil; rice, broom-corn, and bark; gypsum, ground or unground; hewn, or wrought, or unwrought burr or grindstones; dyestuffs; flax, hemp, and tow, unmanufactured; unmanufactured tobacco, rags."

ARTICLE IV.—The citizens of the United States are to have the right to navigate the River St. Lawrence and the Canadian canals communicating with the Great Lakes; and British subjects are to have the right to navigate Lake Michigan.

Maine lumber going down the St. John River is not to be subject to export duty, if shipped to the United States.

ARTICLE. V.—(Conditions on which the treaty shall take effect—Duration.)—The treaty is to go into effect when the British and Canadian parliaments and the Congress of the United States shall have passed the necessary laws.

The treaty is to remain in force for ten years, and further until the expiration of twelve months after either party shall give notice of a wish to terminate the same.

ARTICLE VI.—The provisions of this treaty may be extended to the island of Newfoundland.

ARTICLE VII. — (Ratifications.) — Ratifications to be exchanged within six months.

Signed by
W. L. MARCY.
ELGIN & KINCARDINE.

GREAT BRITAIN, 1862.

TREATY FOR THE SUPPRESSION OF THE AFRICAN SLAVE-TRADE.

Concluded at Washington April 7, 1862. Ratifications exchanged at London, May 20, 1862. Proclaimed June 7, 1862.

"THE United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being desirous to render more effectual the means hitherto adopted for the suppression of the slave trade carried on upon the coast of Africa, have deemed it expedient to conclude a treaty for that purpose." . . . . .

ARTICLE I.—(Search of vessels engaged in the slave-trade.)—"The two high contracting parties mutually consent that those ships of their respective navies which shall be provided with special instruction for that purpose, as hereinafter mentioned, may visit such merchant vessels of the two nations as may, upon reasonable grounds, be suspected of being engaged in the African slave-trade, or of having been fitted out for that purpose; or of having, during the voyage on which they are met by the said cruisers, been engaged in the African slave-trade, contrary to the provisions of this treaty; and that such cruisers may detain, or send or carry away, such vessels, in order that they may be brought to trial in the manner hereinafter agreed upon.

"In order to fix the reciprocal right of search in such a manner as shall be adapted to the attainment of the object of this treaty, and at the same time avoid doubts, disputes, and complaints, the said right of search shall be understood in the manner and according to the rules following:

"First. It shall never be exercised except by vessels of war, authorized expressly for that object, according to the stipulations of this treaty.

"Secondly. The right of search shall in no case be exercised with respect to a vessel of the navy of either of the two Powers, but shall be exercised only as regards merchant vessels; and it shall not be exercised by a vessel of war of either contracting party within the limits of a settlement or port, nor within the territorial waters of the other party.

"Thirdly. Whenever a merchant vessel is searched by a ship of war, the commander of the said ship shall, in the act of so doing, exhibit to the commander of the merchant vessel the special instructions by which he is duly authorized to search; . . . .

"Fourthly. The reciprocal right of search and detention shall be exercised only within the distance of two hundred miles from the coast of Africa, and to the southward of the thirty-second parallel of north latitude, and within thirty leagues from the coast of the island of Cuba."

ARTICLES II. and III. provide for modes of procedure, and indemnity for losses by wrongful detention of vessels.

ARTICLE VI.—(Establishment of mixed courts.)—"In order to

bring to adjudication with as little delay and inconvenience as possible the vessels which may be detained according to the tenor of the first article of this treaty, there shall be established, as soon as may be practicable, three mixed courts of justice, formed of an equal number of individuals of the two nations, named for this purpose by their respective Governments. These courts shall reside, one at Sierre Leone, one at the Cape of Good Hope, and one at New York.

"But each of the two high contracting parties reserves to itself the right of changing, at its pleasure, the place of residence of the court or courts held within its own territories.

"These courts shall judge the causes submitted to them according to the provisions of the present treaty, and according to the regulations and instructions which are annexed to the present treaty, and which are considered an integral part thereof; and there shall be no appeal from their decision."

ARTICLE V.—Reparation for wrongful acts of officers.

ARTICLE VI.—Merchant vessels may be detained if they have on board certain things specified in this article.

ARTICLES VII. to XI. deal with minor matters of detail.

ARTICLE XII.—(Ratification and duration.)—Ratifications to be exchanged within six months. The treaty is to continue in force for ten years, and thereafter until one year after notice to terminate it.

Signed by,

WILLIAM H. SEWARD.
LYONS.[1]

[1] There are two annexes to this convention of same date. The first (A) furnish instructions to the United States and British navies engaged in preventing the slave-trade. The second (B) fixes the regulations for the mixed courts of justice. As to the composition of the courts, each of the contracting parties is to name one judge and one arbitrator who shall be authorized to hear and to decide, without appeal, all cases of capture, etc.

By an additional article, the right of search is extended to the following places: within thirty leagues of the islands of Madagascar, Porto Rico, and San Domingo.

By an additional convention, concluded June 3, 1870, the mixed courts were discontinued, and the jurisdiction exercised by them was transferred to the respective courts of the two countries, with right of appeal as in other maritime cases.

GREAT BRITAIN, 1863.

TREATY FOR THE FINAL SETTLEMENT OF THE CLAIMS OF THE HUDSON'S BAY AND PUGET'S SOUND AGRICULTURAL COMPANIES, JULY 1, 1863.

It was provided by the 3d and 4th articles of the treaty of 1846, that compensation should be made to these companies for any lands or property belonging to them if for any reason they should be appropriated to the use of the United States. This having taken place to some extent, the question was adjusted by this convention.

Under this agreement, the sum of four hundred and fifty thousand dollars was awarded to the Hudson's Bay Company, and two hundred thousand dollars to the Puget's Sound Company.

GREAT BRITAIN, 1871.

TREATY RELATIVE TO CLAIMS, FISHERIES, NAVIGATION OF THE ST. LAWRENCE, ETC., AMERICAN LUMBER ON THE RIVER ST. JOHN; BOUNDARY.

Concluded May 8, 1871. Ratifications exchanged at London, June 17, 1871. Proclaimed July 4, 1871.

ARTICLE I.—(Alabama claims to be referred to arbitration—Arbitrators.)—"Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the 'Alabama Claims:'

"And whereas Her Britannic Majesty has authorized her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the

escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels:

"Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by Her Britannic Majesty's Government, the high contracting parties agree that all the said claims, growing out of acts committed by the aforesaid vessels and generically known as the 'Alabama Claims,' shall be referred to a tribunal of arbitration to be composed of five Arbitrators, to be appointed in the following manner, that is to say: One shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one." * * *

ARTICLE II.—(Meeting of Arbitrators—Their powers—agents.) "The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of the United States and Her Britannic Majesty respectively. All questions considered by the tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

"Each of the high contracting parties shall also name one person to attend the tribunal as its Agent to represent it generally in all matters connected with the arbitration."

ARTICLES III., IV., and V. provide for the presentation of cases, counter-cases, and arguments.

ARTICLE VI.—(Rules to govern the arbitrators in their decisions—British interpretation of these rules.) "In deciding the matters submitted to the Arbitrators, they shall be governed by the following three rules, which are agreed upon by the high contracting parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case.

RULES.

"A neutral Government is bound—

"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against any Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of renewal or augment tation of military supplies or arms, or the recruitment of men.

"Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

"Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I. arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

"And the high contracting parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them."

ARTICLES VII. to XI. provide for the various details of the arbitration and decision.

ARTICLES XII. to XVII. provide for the appointment of three commissioners to adjudicate upon private claims (other than

the Alabama claims) against either government, arising during the period from the 13th of April, 1861, to the 9th of April, 1865.

ARTICLE XVIII.—(Inhabitants of the United States to have the right to fish in Canadian waters.) "It is agreed by the high contracting parties that, in addition to the liberty secured to the United States fishermen by the convention between the United States and Great Britain, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty for the term of years mentioned in Article XXXIII. of this treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks, of the provinces of Quebec, Nova Scotia, and New Brunswick, and the colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen."

ARTICLE XIX.—Similar rights granted to British fishermen on the eastern coast of the United States, north of the 39th parallel of north latitude.

ARTICLE XX.—Certain places reserved by Article I. of the treaty of 1854 and designated by commissioners appointed under that treaty, to be reserved by the present treaty.

ARTICLE XXI.—Fish and fish-oil to be free of duty.

ARTICLE XXII.—(Commissioners to determine the compensation, if any, to be paid by the United States, for the privileges granted by Article XVIII. of this treaty.) "Inasmuch as it is asserted by the Government of Her Britannic Majesty that the

privileges accorded to the citizens of the United States under Article XVIII. of this treaty are of greater value than those accorded by Articles XIX. and XXI. of this treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX. and XXI. of this treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII. of this treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given."

ARTICLE XXIII.—Three commissioners are to be appointed, one by each government, and one by the two governments conjointly. And in case the third commissioner shall not be appointed within three months from the date when this article shall take effect, then such commissioner shall be appointed by the Austrian ambassador at London

The commissioners are to meet at Halifax, and each government is to have an agent.

ARTICLES XXIV. and XXV. provide for the conduct of the proceedings.

ARTICLE XXVI.—(Navigation of the St. Lawrence, and other rivers.) "The navigation of the river St. Lawrence, ascending and descending, from the forty-fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the citizens of the United States, subject to any laws and regulations of Great Britain, or of the Dominion of Canada, not inconsistent with such privilege of free navigation."

The same stipulation is applied to the rivers Yukon, Porcupine, and Stikine.

ARTICLE XXVII.—(As to the navigation of certain canals.) "The Government of Her Britannic Majesty engages to urge

upon the Government of the Dominion of Canada to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion: and the Government of the United States engages that the subjects of Her Britannic Majesty shall enjoy the use of the St. Clair Flats canal on terms of equality with the inhabitants of the United States, and further engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the possessions of the high contracting parties, on terms of equality with the inhabitants of the United States."

ARTICLE XXVIII.—The navigation of Lake Michigan to be free to British subjects for the term of years mentioned in Article XXXIII.

ARTICLE XXIX.—(Transit of merchandise through the territory of the United States). "It is agreed that, for the term of years mentioned in Article XXXIII. of this treaty, goods, wares, or merchandise arriving at the ports of New York, Boston, and Portland, and any other ports in the United States which may have been or may, from time to time, be especially designated by the President of the United States, and destined for Her Britannic Majesty's possessions in North America, may be entered at the proper custom-house and conveyed in transit, without the payment of duties, through the territory of the United States, under such rules, regulations, and conditions for the protection of the revenue as the Government of the United States may from time to time prescribe; and under like rules, regulations, and conditions, goods, wares, or merchandise may be conveyed in transit, without the payment of duties, from such possessions through the territory of the United States for export from the said ports of the United States."

Reciprocal privileges are granted by Great Britain for the transit of goods over the British North American possessions.

ARTICLE XXX.—British subjects may carry in British vessels goods free of duty from certain ports of the United States to other such ports, provided that a portion of the transportation is made through the Dominion of Canada by land carriage

and in bond. And reciprocal privileges are granted to citizens of the United States.

And in these cases, neither government shall impose export duties.

The government of the United States may suspend the right "granted under this article in case the Dominion of Canada should at any time deprive the citizens of the United States of the use of the canals of the said Dominion on terms of equality with the inhabitants of the Dominion, as provided in Article XXVII."

ARTICLE XXXI.—Provision as to duty on lumber from Maine floated down the St. John, and shipped to the United States.

ARTICLE XXXII.—Provisions of Articles XVIII. to XXV., inclusive, to extend to Newfoundland.

ARTICLE XXXIII.—(Time for Articles XVIII. to XXV. and Article XXX. to take effect—Duration.)—"The foregoing Articles XVIII. to XXV., inclusive, and Article XXX. of this treaty shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said articles shall remain in force for the period of ten years from the date at which they may come into operation; and further until the expiration of two years after either of the high contracting parties shall have given notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said period of ten years or at any time afterward."

ARTICLE XXXIV.—(Arbitration on a portion of the Oregon boundary.) The determination of the boundary fixed by the treaty of 1846, described as running "to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of said channel and of Fuca Straits, to the Pacific Ocean," is by this article referred to the Emperor of Germany as arbitrator.

ARTICLES XXXV. to XLII., inclusive, provide for the details of this arbitration.

ARTICLE XLIII.—Ratifications. Signed by,

HAMILTON FISH.
ROBT. C. SCHENCK.
SAMUEL NELSON.
EBENEZER ROCKWOOD HOAR.
GEO. H. WILLIAMS.
DE GREY & RIPON.
STAFFORD H. NORTHCOTE.
EDWD. H. THORNTON.
JOHN A. MACDONALD.
MONTAGUE BERNARD.

[Under the provisions of this treaty, the dispute in respect of Alabama claims was settled by the award of the Geneva Tribunal, in 1872. Other claims provided for by the 12th article of the treaty were adjudicated upon and disposed of by a mixed commission, which awarded the sum of $1,929,819, in gold to be paid by the United States to Great Britain (See Report of Robert S. Hale, November 30, 1873).

The commission provided for by Article XXII. met at Halifax in 1877, and by its decision of the 23rd of November, awarded the sum of five million five hundred thousand dollars to be paid by the United States to Great Britain. Congress appropriated the money for the payment of the award, but instructed the executive to give the required notice of the termination of the fisheries articles of the treaty at the earliest possible moment. Accordingly such notice was given the first of July, 1883, and these articles came to an end two years later.]

GREAT BRITAIN, 1892.

A CONVENTION FOR THE SETTLEMENT OF THE DISPUTED RIGHT OF THE UNITED STATES TO PROTECT THE SEALS IN BEHRING SEA.

Concluded at Washington, February 29, 1892.

"The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being desirous to provide for an amicable settlement of the questions which have arisen between their respective governments concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in, or habitually resorting to, the said Sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in, or habitually resorting to, the said waters, have resolved to submit to arbitration the questions involved."

ARTICLE I.—(Reference to Arbitration—appointment of arbitrators.)—"The questions which have arisen between the Government of the United States and the Government of Her Britannic Majesty concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in, or habitually resorting to, the said Sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in, or habitually resorting to, the said waters, shall be submitted to a tribunal of Arbitration, to be composed of seven Arbitrators, who shall be appointed in the following manner, that is to say: Two shall be named by the President of the United States; two shall be named by Her Britannic Majesty; His Excellency the President of the French Republic shall be jointly requested by the High Contracting Parties to name one; His Majesty the King of Italy shall be so requested to name one; and His Majesty the King of Sweden and Norway shall be so requested to name one. The seven arbitrators to be so named shall be jurists of distinguished reputation in their respective countries." . . .

ARTICLE II.—(Place of meeting—Agents.)—"The arbitrators shall meet at Paris within twenty days after the delivery of the counter-case mentioned in Article IV. and shall proceed impartially and carefully to examine and decide the questions that have been or shall be laid before them as herein provided on the part of the Governments of the United States and Her Britannic Majesty respectively. All questions considered by the tribunal including the final decision, shall be determined by a majority of all the Arbitrators.

"Each of the High Contracting Parties shall also name one person to attend the tribunal as its Agent to represent it generally in all matters connected with the arbitration."

ARTICLES III. to V. provide for the presentation of cases, counter-cases, and arguments.

ARTICLE VI.—(Points submitted for arbitration.)—"In deciding the matters submitted to the Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit:

"1. What exclusive jurisdiction in the sea now known as the Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

"2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

"3. Was the body of water now known as the Behring's Sea included in the phrase 'Pacific Ocean,' as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring's Sea were held and exclusively exercised by Russia after said Treaty?

"4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring's Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that treaty?

"5. Has the United States any right, and if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary three-mile limit?"

ARTICLE VII.—(Question of Regulations.)—"If the deter-

mination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend, and to aid them in that determination the report of a Joint Commission to be appointed by the respective Governments shall be laid before them, with such other evidence as either Government may submit.

"The High Contracting Parties furthermore agree to cooperate in securing the adhesion of other Powers to such Regulations."

ARTICLE VIII.—(Question of liability for injuries.)—"The High Contracting Parties having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it; and, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the Arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation."

ARTICLE IX.— Two commissioners are to be appointed by each government to investigate the facts having relation to seal-life, and to report to the arbitrators.

ARTICLES X. to XIV.—Minor details of the arbitration.

ARTICLE XV.—Ratification, etc. Signed by,

JAMES G. BLAINE.
JULIAN PAUNCEFOTE.

SPAIN, 1795.

TREATY OF FRIENDSHIP, LIMITS, AND NAVIGATION.

Concluded October 27, 1795. Ratifictaions exchanged at Aranjuez, April 25, 1796. Proclaimed August 2, 1796.

ARTICLE I.—(Declaration of amity.)—"There shall be a firm and inviolable peace and sincere friendship between His Catholic Majesty, his successors and subjects, and the United States and their citizens, without exception of persons or places.

ARTICLE II.—(Florida boundary.)—"To prevent all disputes on the subject of the boundaries which separate the territories of the two high contracting parties, it is hereby declared and agreed as follows, to wit: The southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the River Mississippi, at the northernmost part of the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east to the middle of the River Appalachicola, or Catahouche, thence along the middle thereof to its junction with the Flint; thence straight to the head of St. Mary's River, and thence down the middle thereof to the Atlantic Ocean. And it is agreed that if there should be any troops, garrisons, or settlements of either party in the territory of the other, according to the above mentioned boundaries, they shall be withdrawn from the said territory within the term of six months after the ratification of this treaty, or sooner if it be possible; and that they shall be permitted to take with them all the goods and effects which they possess."

ARTICLE III.—Commissioners to be appointed to survey the line designated in the preceding article.

ARTICLE IV.—(Western boundary of the United States.)—"It is likewise agreed that the western boundary of the United States which separates them from the Spanish colony of Louisiana, is in the middle of the channel or bed of the River Mississippi, from the northern boundary of the said States to the completion of the thirty-first degree of latitude north of the

equator. And His Catholic Majesty has likewise agreed that the navigation of the said river, in its whole breadth from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other Powers by special convention."

ARTICLE V.—Both States shall endeavor to restrain the Indians, etc.

ARTICLES VI. to X. deal with questions of protection of vessels; embargo and seizure of persons for debts or crimes; vessels forced into port by stress of weather; property taken from pirates to be restored; and vessels wrecked or foundered.

ARTICLE XI.—Personal estates of the one party within the jurisdiction of the other may be disposed of by will or otherwise.

And where a citizen of one nation inheriting real estate within the jurisdiction of the other, would not by law be allowed to hold it by reason of being an alien, he shall be allowed a reasonable time to sell the same and to withdraw the proceeds, exempt from all rights of detraction.

ARTICLE XII.—Vessels suspected shall exhibit passports and certificates.

ARTICLE XIII.—In the event of war between the two nations, merchants of the one residing in the territory of the other shall have one year for collecting and transporting their goods and merchandise.

ARTICLE XIV.—No citizen of either nation shall take a commission or letters of marque from the enemy of the other.

ARTICLE XV.—(Liberty of trade—free ships, free goods.) "It shall be lawful for all and singular the subjects of His Catholic Majesty, and the citizens, people, and inhabitants of the said United States, to sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandises laden thereon, from any port to the places of those who now are, or hereafter shall be, at enmity with His Catholic Majesty or the United States. It shall be likewise lawful for the subjects and inhabitants aforesaid, to sail with the ships and merchandises aforementioned, and to trade with the same liberty and security from the places, ports, and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly

from the places of the enemy aforementioned, to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same Prince or under several; and it is hereby stipulated that free ships shall also give freedom to goods, and that everything shall be deemed free and exempt which shall be found on board the ships belonging to the subjects of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either; contraband goods being always excepted. It is also agreed that the same liberty be extended to persons who are on board a free ship, so that, although they be enemies to either party, they shall not be made prisoners or taken out of that free ship, unless they are soldiers and in actual service of the enemies."

ARTICLE XVI.—Contraband enumerated. Similar to Article XXVII. of the Plan of Treaties, and Article XXIV. of the treaty of commerce with France in 1778.

ARTICLES XVII. and XVIII.—Provide for the carrying of passports and certificates by merchant vessels, and for the right of search. See Plan of Treaties, XXVIII. to XXX.

ARTICLE XIX.—Consuls may be appointed, with the privileges and powers of those of the most favored nation.

ARTICLE XX.—The inhabitants of either State shall have free access to the courts of justice of the other.

ARTICLE XXI.—(Claims for illegal capture of American vessels by Spanish subjects.)—These claims are to be referred to two commissioners for adjudication.

ARTICLE XXII.—(Deposit of goods at New Orleans.)—"In consequence of the stipulations contained in the IV. article, His Catholic Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandise and effects in the port of New-Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores; and His Majesty promises either to continue this permission, if he finds during that time that it is not prejudicial to the interests of Spain, or if he should not agree to continue it there, he will assign to them on another part of the banks of the Mississippi an equivalent establishment."

ARTICLE XXIII.—(Ratifications.)—"Done at San Lorenzo el

Real, this seven and twenty day of October, one thousand seven hundred and ninety-five.[1]

THOMAS PINCKNEY.
EL PRINCIPE DE LA PAZ.

[1] During the American revolutionary war Spain refused to recognize the independence of the United States, but she declared war against England, in 1779, and occupied West Florida, which she retained by the treaty of 1783. After the peace, Spain closed the lower Mississippi to the navigation of the citizens of the United States, and occupied territory on that river to the north of the 31st degree of north latitude, and fortified Natchez. England, it was asserted, had ceded territory and rights to the United States which she had no authority to cede. The United States, on the other hand, insisted on the 31st degree of north latitude as their southern boundary ; and in respect of the navigation of the Mississippi, they claimed it by right under the treaties of 1763 and 1783, as well as by the law of nature and of nations. By the treaty of 1795, Spain yielded both points—boundary and the navigation of the Mississippi.

In November, 1802, the right of deposit under the 22d article, was withdrawn ; but the purchase of Louisiana by the United States soon after, removed the possible controversy that might have grown out of it.

Spain was, however, extremely dissatisfied with the cession of Louisiana to the United States, and threw many obstacles in the way of their peaceable possession of it. Moreover the United States claimed West Florida as being included in the Louisiana cession, while Spain insisted on the boundary of the Iberville, and lakes Maurepas and Pontchartrain. This difference resulted in the breaking off of diplomatic relations, in 1808, which were not resumed till 1815. In the meantime the United States took forcible possession of West Florida in 1810, and annexed the larger part to the territories of Orleans and Mississippi.

On the side of Mexico there was also a boundary dispute, the United States insisting on the Rio Grande as the boundary, while the Spanish claim extended to the Mermentan. The Sabine had been considered as a provisional boundary ; but Spanish troops had crossed that river, and General Wilkinson was ordered to drive them back.

The treaty of 1819 settled all these controversies with Spain.

SPAIN, 1819.

TREATY OF AMITY, SETTLEMENT, AND LIMITS.

Concluded February 22, 1819. Ratifications exchanged at Washington February 22, 1821. Proclaimed February 22, 1821.

ARTICLE I.—Declaration of amity.

ARTICLE II.—(Cession of the Floridas to the United States.)—"His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belonged to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries or officers of the United States, duly authorized to receive them."

ARTICLE III.—(Boundary west of the Mississippi.)—"The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; thence following the course to the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas, thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas River shall be found to fall north or south of latitude 42, then the line shall run from the said source due north or south, as the case may be, till it meets the said parallel of latitude 42, and thence, along the said

parallel, to the South Sea: All the islands in the Sabine, and the said Red and Arkansas Rivers, throughout the course thus described, to belong to the United States; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

"The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions, to the territories described by the said line, that is to say: The United States hereby cede to His Catholic Majesty, and renounce forever, all their rights, claims, and pretensions, to the territories lying west and south of the above-described line; and in like manner, His Catholic Majesty cedes to the said United States all his rights, claims, and pretensions to any territories east and north of the said line, and for himself, his heirs, and successors, renounces all claim to the said territories forever."

ARTICLE IV.—Two commissioners shall be appointed to survey and fix the boundary designated in Article III.

ARTICLE V.—Stipulates for the religious freedom of the inhabitants of the ceded territories, and for the free removal of persons and property from the same.

ARTICLE VI.—(Inhabitants of the ceded territories.)—"The inhabitants of the territories which His Catholic Majesty cedes to the United States, by this treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States."

ARTICLE VII.—Spanish troops to be withdrawn.

ARTICLE VIII.—(Grants of land before and after January 24, 1818.)—"All the grants of land made before the 24th of January, 1818, by His Catholic Majesty, or by his lawful authorities, in the said territories ceded by His Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of His Catholic Majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, have been prevented

from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which the said grants shall be null and void. All grants made since the said 24th of January, 1818, when the first proposal, on the part of His Catholic Majesty, for the cession of the Floridas was made, are hereby declared and agreed to be null and void."

ARTICLE IX.—Reciprocal renunciation of claims.

The United States will cause satisfaction to be made for injuries to individuals, if any, by the late operations of the American army in Florida.

ARTICLE X.—(Convention of 1802 annulled.) "The convention entered into between the two Governments, on the 11th of August, 1802, the ratifications of which were exchanged the 21st December, 1818, is annulled."

ARTICLE XI.—(The United States to satisfy the claims of their citizens.)—"The United States, exonerating Spain from all demands in future, on account of the claims of their citizens to which the renunciations herein contained extend, and considering them entirely cancelled, undertake to make satisfaction for the same, to an amount not exceeding five millions of dollars. To ascertain the full amount and validity of those claims, a commission, to consist of three Commissioners, citizens of the United States, shall be appointed by the President, by and with the advice and consent of the Senate." . . . . . .

ARTICLE XII.—(Treaty of 1795 confirmed, with exceptions.) "The treaty of limits and navigation, of 1795, remains confirmed in all and each one of its articles, excepting the 2, 3, 4, 21, and the second clause of the 22 article, which, having been altered by this treaty, or having received their entire execution, are no longer valid.

"With respect to the 15th article of the same treaty of friendship, limits, and navigation of 1795, in which it is stipulated that the flag shall cover the property, the two high contracting parties agree that this shall be so understood with respect to those Powers who recognize this principle; but if either of the two contracting parties shall be at war with a third party, and the other neutral, the flag of the neutral shall cover the property of enemies whose Government acknowledges this principle and not of others."

ARTICLE XIII.—Sailors of one nation, deserting in the ports of the other, shall be arrested and delivered up, at the instance of the consul.

ARTICLE XIV.—The United States certify that they received no compensation from France for claims.

ARTICLE XV.—Spanish vessels, laden only with productions of Spanish growth or manufacture, coming directly from Spain, or her colonies, "shall be admitted, for the term of twelve years, to the ports of Pensacola and St. Augustine, without paying other or higher duties on their cargoes, or of tonnage, than will be paid by the vessels of the United States. During the said term no other nation shall enjoy the same privileges within the ceded territories."

ARTICLE XVI.—Ratifications, etc.

Signed by

JOHN QUINCY ADAMS.
LUIS DE ONIS.[1]

PRUSSIA, 1785.

TREATY OF AMITY AND COMMERCE

Concluded September 10, 1785. Ratified by the Continental Congress, May 17, 1786. Ratifications exchanged at the Hague, October, 1786.

ARTICLE IV.—(Regulation of commercial intercourse.) "More especially each party shall have a right to carry their own produce, manufactures, and merchandize in their own or any other vessels to any parts of the dominions of the other where it shall be lawful for all the subjects or citizens of that other freely to purchase them; and thence to take the produce, manufactures, and merchandize of the other, which all the said

[1] Other treaties or conventions with Spain have been conventions for the settlement of claims in 1802, 1834, and 1871; a convention for the extradition of criminals (see Extradition Treaties), Trade-Marks, 1882, in respect of tonnage and other duties relating to the islands of Cuba and Porto Rico, 1884–1887.

citizens or subjects shall in like manner be free to sell them, paying in both cases such duties, charges, and fees only as are or shall be paid by the most favored nation. Nevertheless, the King of Prussia and the United States, and each of them, reserve to themselves the right, where any nation restrains the transportation of merchandize to the vessels of the country of which it is the growth or manufacture, to establish against such nations restaliating [retaliating] regulations; and also the right to prohibit, in their respective countries, the importation and exportation of all merchandize whatsoever, when reasons of state shall require it. In this case, the subjects or citizens of either of the contracting parties shall not import nor export the merchandize prohibited by the other; but if one of the contracting parties permits any other nation to import or export the same merchandize, the citizens or subjects of the other shall immediately enjoy the same liberty."

ARTICLE XII.—(Liberty for either party to trade with a nation, at war with the other.—Free ships make free goods.) "If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace, the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other; and the same freedom shall be extended to persons who shall be on board a free vessel, although they should be enemies to the other party, unless they be soldiers in actual service of such enemy."

ARTICLE XIII.—(Contraband goods intended for an enemy not to be confiscated, but may be detained.) "And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting the merchandize heretofore called contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of one of the parties to the enemies of the other, shall be deemed contraband, so as

to induce confiscation or condemnation and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors; And it shall be further allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed, of a vessel stopped for articles heretofore deemed contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage."

ARTICLE XXIII.—(In case of war nine months to be allowed merchants to settle their affairs.)—"If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance. And all women and children, scholars of every faculty, cultivators of the earth, artizans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price. And all merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested; and neither of the contracting Powers shall grant or issue any

commission to any private armed vessels, empowering them to take or destroy such trading vessels or interrupt such commerce."

ARTICLE XXIV.—(Prisoners of war to be humanely treated.)

Signed by

B. FRANKLIN.
TH. JEFFERSON.
JOHN ADAMS.
F. G. de THULEMEIER.

PRUSSIA, 1799.

TREATY OF AMITY AND COMMERCE.

Concluded July 11, 1799. Ratifications exchanged at Berlin, June 22, 1800. Proclaimed November 4, 1800.

ARTICLE XII.—(Free ships make free goods.)—"Experience having proved, that the principle adopted in the twelfth article of the treaty of 1785, according to which free ships make free goods, has not been sufficiently respected during the two last wars, and especially in that which still continues, the two contracting parties propose, after the return of a general peace, to agree, either separately between themselves or jointly with other Powers alike interested, to concert with the great maritime Powers of Europe such arrangements and such permanent principles as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars. And if in the interval either of the contracting parties should be engaged in a war to which the other should remain neutral, the ships of war and privateers of the belligerent Power shall conduct themselves towards the merchant vessels of the neutral Power as favourably as the course of the war then existing may permit, observing the principles and rules of the law of nations generally acknowledged." [1]

[1] This treaty is practically a renewal of the treaty of 1775, which was about to expire by its own limitation.

PRUSSIA, 1828.

Treaty of Commerce and Navigation.

Concluded May 1, 1828. Ratifications exchanged at Washington March, 14, 1829. Proclaimed March 14, 1829.

"The United States of America and His Majesty the King of Prussia, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective States, of extending, also, and consolidating the commercial intercourse between them, and convinced that this object cannot better be accomplished than by adopting the system of an entire freedom of navigation, and a perfect reciprocity, based upon principles of equity equally beneficial to both countries, and applicable in time of peace as well as in time of war, have, in consequence, agreed to enter into negotiations for the conclusion of a treaty of navigation and commerce; for which purpose the President of the United States has conferred full powers on Henry Clay, their Secretary of State; and His Majesty the King of Prussia has conferred like powers on the Sieur Ludwig Niederstetter, Chargé d'Affaires of His said Majesty, near the United States; and the said Plenipotentiaries, having exchanged their said full powers, found in good and due form, have concluded and signed the following articles:

Article I.—(Reciprocal liberty of commerce.)—"There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing."

ARTICLE II.—(No discrimination in duties on vessels.)—"Prussian vessels arriving either laden or in ballast in the ports of the United States of America, and, reciprocally, vessels of the United States arriving either laden or in ballast in the ports of the Kingdom of Prussia, shall be treated, on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place with respect to the duties of tonnage, light-houses, pilotage, salvage and port charges, as well as to the fees and perquisites of public officers, and all other duties and charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatever."

ARTICLE III.—(No discrimination in duties on imports on account of nationality of vessels importing same.)—"All kinds of merchandise and articles of commerce, either the produce of the soil or the industry of the United States of America, or of any other country, which may be lawfully imported into the ports of the Kingdom of Prussia, in Prussian vessels, may also be so imported in vessels of the United States of America, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than if the same merchandise or produce had been imported in Prussian vessels. And, reciprocally, all kind of merchandise and articles of commerce, either the produce of the soil or of the industry of the Kingdom of Prussia, or of any other country, which may be lawfully imported into the ports of the United States in vessels of the said States, may also be so imported in Prussian vessels, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been imported in vessels of the United States of America."

ARTICLE IV.—(The above provision further explained.)—To prevent the possibility of any misunderstanding, it is hereby declared that the stipulations contained in the two preceding articles are to their full extent applicable to Prussian vessels and their cargoes, arriving in the ports of the United

States of America, and, reciprocally, to vessels of the said States and their cargoes, arriving in the ports of the Kingdom of Prussia, whether the said vessels clear directly from the ports of the country to which they respectively belong, or from the ports of any other foreign country."

ARTICLE V.—(No discrimination in duties on account of nationality of imports.)—"No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Prussia, and no higher or other duties shall be imposed on the importation into the Kingdom of Prussia of any article the produce or manufacture of the United States, than are or shall be payable on the like article being the produce or manufacture of any other foreign country. Nor shall any prohibition be imposed on the importation or exportation of any article the produce or manufacture of the United States, or of Prussia, to or from the ports of the United States, or to or from the ports of Prussia, which shall not equally extend to all other nations."

ARTICLE VI.—(No discrimination in duties on exports on account of nationality of vessels exporting same.)—"All kinds of merchandise and articles of commerce, either the produce of the soil or of the industry of the United States of America, or of any other country, which may be lawfully exported from the ports of the said United States, in national vessels, may also be exported therefrom in Prussian vessels without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been exported in vessels of the United States of America.

"An exact reciprocity shall be observed in the ports of the Kingdom of Prussia, so that all kinds of merchandise and articles of commerce, either the produce of the soil or of the industry of the said Kingdom, or of any other country, which may be lawfully exported from Prussian ports in national vessels, may also be exported therefrom in vessels of the United States of America, without paying other or higher duties or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than if the same

merchandise or produce had been exported in Prussian vessels."

ARTICLE VII.—(Coastwise navigation excepted.)—"The preceding articles are not applicable to the coastwise navigation of the two countries, which is respectively reserved by each of the high contracting parties exclusively to itself."

ARTICLE VIII.—(Neither party to give any preference to goods on account of the importing bottom.)—"No priority or preference shall be given, directly or indirectly, by either of the contracting parties, nor by any company, corporation, or agent, acting on their behalf or under their authority, in the purchase of any article of commerce, lawfully imported, on account of or in reference to the character of the vessel, whether it be of the one party or of the other, in which such article was imported; it being the true intent and meaning of the contracting parties that no distinction or difference whatever shall be made in this respect."

ARTICLE IX.—(Most favored nation.)—"If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional."

ARTICLE X.—(Consuls—Their jurisdiction.)—"The two contracting parties have granted to each other the liberty of having, each in the ports of the other, Consuls, Vice-Consuls, Agents, and Commissaries of their own appointment, who shall enjoy the same privileges and powers as those of the most favored nations. But if any such Consul shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted, in the same place.

"The Consuls, Vice-Consuls, and Commercial Agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said Consuls, Vice-Consuls, or Commercial Agents should require

their assistance to cause their decisions to be carried into effect or supported. It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country."

ARTICLE XI.—(Application by Consuls to government authorities—Deserters.)—"The said Consuls, Vice-Consuls, and Commercial Agents are authorized to require the assistance of the local authorities, for the search, arrest, and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall in writing demand said deserters, proving by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and, on this reclamation being thus substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall reclaim them, in order to be sent to the vessels to which they belonged, or to others of the same country. But if not sent back within three months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which his case may be depending shall have pronounced its sentence, and such sentence shall have been carried into effect."

ARTICLE XII.—(Certain stipulations in former treaties revived—Security of neutral navigation to be the subject of future treaty.)—"The twelfth article of the treaty of amity and commerce, concluded between the parties in 1785, and the articles from the thirteenth to the twenty-fourth, inclusive, of that which was concluded at Berlin in 1799, with the exception of the last paragraph in the nineteenth article, relating to treaties with Great Britain, are hereby revived with the same force and virtue as if they made part of the context of the present treaty, it being, however, understood that the stipulations contained in the articles thus revived shall be always considered as in no manner affecting the treaties or conventions

concluded by either party with other Powers, during the interval between the expiration of the said treaty of 1799, and the commencement of the operation of the present treaty.

"The parties being still desirous, in conformity with their intention declared in the twelfth article of the said treaty of 1799, to establish between themselves, or in concert with other maritime Powers, further provisions to ensure just protection and freedom to neutral navigation and commerce, and which may, at the same time, advance the cause of civilization and humanity, engage again to treat on this subject at some future and convenient period."

ARTICLE XIII.—(Vessels entering blockaded ports.)—"Considering the remoteness of the respective countries of the two high contracting parties, and the uncertainty resulting therefrom, with respect to the various events which may take place, it is agreed that a merchant vessel belonging to either of them, which may be bound to a port supposed at the time of its departure to be blockaded, shall not, however, be captured or condemned for having attempted a first time to enter said port, unless it can be proved that said vessel could and ought to have learnt, during its voyage, that the blockade of the place in question still continued. But all vessels which, after having been warned off once, shall, during the same voyage, attempt a second time to enter the same blockaded port, during the continuance of the said blockade, shall then subject themselves to be detained and condemned."

ARTICLE XIV.—(Personal estates may be disposed of by will or otherwise—Inherited real estate, how disposed of.)—"The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise; and their representatives, being citizens or subjects of the other party, shall succeed to their said personal goods, whether by testament or *ab intestato*, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods as would be taken of the goods of a native, in like case, until the lawful owner may take measures

for receiving them. And if questions should arise among several claimants to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation and exempt from all duties of detraction, on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published by His Majesty the King of Prussia, to prevent the emigration of his subjects."

ARTICLE XV.—(Duration of treaty.)—"The present treaty shall continue in force for twelve years, counting from the day of the exchange of the ratifications; and if, twelve months before the expiration of that period, neither of the high contracting parties shall have announced, by an official notification to the other, its intention to arrest the operation of said treaty, it shall remain binding for one year beyond that time, and so on until the expiration of the twelve months, which will follow a similar notification, whatever the time at which it may take place."

ARTICLE XVI.—(Ratifications.)—"This treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Prussia, and the ratifications shall be exchanged in the city of Washington, within nine months from the date of the signature hereof, or sooner if possible.

"In faith whereof the respective Plenipotentiaries have signed the above articles, both in the French and English languages, and they have thereto affixed their seals; declaring nevertheless, that the signing in both languages shall not be brought into precedent, nor in any way operate to the prejudice of either party.

"Done in triplicate at the city of Washington on the first day of May, in the year of our Lord one thousand eight hun-

dred and twenty-eight, and the fifty-second of the Independence of the United States of America.[1]

"H. CLAY.
"LUDWIG NIEDERSTETTER."

DENMARK, 1857.

CONVENTION EXCEPTING AMERICAN VESSELS FROM THE SOUND AND BELTS-DUES.

Concluded April 11, 1857. Ratifications exchanged at Washington, January 12, 1858. Proclaimed January 13, 1858.

"The United States of America and His Majesty the King of Denmark, being desirous to terminate amicably the differences which have arisen between them in regard to the [redacted] levied by Denmark on American vessels and their cargoes [redacted] ing through the Sound and Belts, and commonly called Sound-dues, have resolved to conclude a convention for purpose, and have named as their Plenipotentiaries, say:

"The President of the United States, Lewis [redacted] of State of the United States, and His Majesty Denmark, Torben Bille, Esquire, Knight of th and decorated with the cross of honor of the sai said Majesty's Charge d'Affaires near the Govern. United States:

"Who, after having communicated to each othei powers, in due form, have agreed to and signed the articles:

ARTICLE I.—(Navigation of the Sound and Belts to [redacted]e to vessels of the United States.)—"His Majesty the King of Denmark declares entire freedom of the navigation of the Sound and the Belts in favor of American vessels and their cargoes, from and forever after the day when this convention shall go into effect as hereinafter provided. And it is hereby

[1] An extradition treaty was concluded with Prussia and other States of the Germanic Confederation, in 1852. See Extradition Treaties.

agreed that American vessels and their cargoes, after that day, shall not be subject to any charges whatever in passing the Sound or the Belts, or to any detention in the said waters, and both Governments will concur, if occasion should require it, in taking measures to prevent abuse of the free flag of the United States by the shipping of other nations which shall not have secured the same freedom and exemption from charges enjoyed by that of the United States."

ARTICLE II. (Lights and buoys—Employment of Danish pilots.)—"His Danish Majesty further engages that the passages of the Sound and Belts shall continue to be lighted and buoyed as heretofore without any charge upon American vessels or their cargoes on passing the Sound and the Belts, and that the present establishments of Danish pilots on those waters shall continue to be maintained by Denmark. His Danish Majesty agrees to make such additions and improvements in regard to the lights, buoys and pilot establishments in these waters as circumstances and the increasing trade of the Baltic may require. He further engages that no charge shall be made, in consequence of such additions and improvements, on American ships and their cargoes passing through the Sound and the Belts.

"It is understood, however, to be optional for the masters of American vessels either to employ, in the said waters, Danish pilots, at reasonable rates fixed by the Danish Government, or to navigate their vessels without such assistance."

ARTICLE III.—(Toll dues to be paid by the United States.)—"In consideration of the foregoing agreements and stipulations on the part of Denmark, whereby the free and unincumbered navigation of American vessels through the Sound and the Belts is forever secured, the United States agree to pay to the Government of Denmark, once for all, the sum of seven hundred and seventeen thousand eight hundred and twenty-nine rix dollars, or its equivalent, three hundred and ninety-three thousand and eleven dollars in United States currency, at London, on the day when the said convention shall go into full effect, as hereinafterwards provided."

ARTICLE IV.—(Most favored nation.)—"It is further agreed that any other or further privileges, rights, or advantages which may have been, or may be, granted by Denmark to the com-

merce and navigation of any other nation at the Sound and Belts, or on her coasts and in her harbors, with reference to the transit by land through Danish territory of merchandise belonging to the citizens or subjects of such nation, shall also be fully extended to, and enjoyed by, the citizens of the United States, and by their vessels and property in that quarter."

ARTICLE V.—(Convention of April 26, 1826, except 5th article, revived.)—"The general convention of friendship, commerce and navigation, concluded between the United States and His Majesty the King of Denmark, on the 26th of April, 1826, and which was abrogated on the 15th of April, 1856, and the provisions contained in each and all of its articles, the 5th article alone excepted, shall, after the ratification of this present convention, again become binding upon the United States and Denmark; it being, however, understood, that a year's notice shall suffice for the abrogation of the stipulations of the said convention hereby renewed."

ARTICLE VI.—(Time when this convention shall be operative.)—"The present convention shall take effect as soon as the laws to carry it into operation shall be passed by the Government of the contracting parties, and the sum stipulated to be paid by the United States shall be received by or tendered to Denmark; and for the fulfilment of these purposes, a period not exceeding twelve months from the signing of this convention shall be allowed.

"But if, in the interval, an earlier day shall be fixed upon and carried into effect for a free navigation through the Sound and Belts in favor of any other power or powers, the same shall simultaneously be extended to the vessels of the United States and their cargoes, in anticipation of the payment of the sum stipulated in Article III.; it being understood, however, that in that event the Government of the United States shall also pay to that of Denmark four per cent. interest on the said sum, from the day the said indemnity shall have gone into operation until the principal shall have been paid as aforesaid."

ARTICLE VII.—(Ratifications.)—"The present convention shall be duly ratified, and the exchange of ratifications shall take place in Washington within ten months from the date hereof, or sooner if practicable.

"In faith whereof the respective Plenipotentiaries have signed

the present convention, in duplicate, and have thereunto affixed their seals.

"Done at Washington this eleventh day of April, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States the eighty-first.[1]

"LEWIS CASS.
"TORBEN BILLE."

ITALY, 1871.

Treaty of Commerce and Navigation.

Concluded February 26, 1871. Ratifications exchanged at Washington, November 18, 1871. Proclaimed November 23, 1871.

Article I.—(Freedom of Commerce and navigation; and privileges of citizens of one nation in the territory of the other.)

"There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation.

"Italian citizens in the United States, and citizens of the United States in Italy, shall mutually have liberty to enter with their ships and cargoes all the ports of the United States and of Italy, respectively, which may be open to foreign commerce. They shall also have liberty to sojourn and reside in all parts whatever of said territories. They shall enjoy, respectively, within the States and possessions of each party, the same rights, privileges, favors, immunities, and exemptions for their commerce and navigation as the natives of the country wherein they reside, without paying other or higher duties or charges than are paid by the natives, on condition of their submitting to the laws and ordinances there prevailing.

"War vessels of the two Powers shall receive in their respective ports the treatment of those of the most favored nation.

[1] The United States and Denmark concluded a treaty of friendship commerce and navigation, April 26, 1826, which is similar to that with Prussia, of 1828, in the principles applied to commerce and navigation.

Other treaties with Denmark are a claims convention in 1830, an additional article to the treaty of 1826, in 1861, and a convention relative to naturalization in 1872, (see Treaties of Naturalization).

ARTICLE II.—(Right to travel and carry on trade.)—"The citizens of each of the high contracting parties shall have liberty to travel in the States and Territories of the other, to carry on trade, wholesale and retail, to hire and occupy houses and warehouses, to employ agents of their own choice, and generally to do anything incident to or necessary for trade, upon the same terms as the natives of the country, submitting themselves to the laws there established."

ARTICLE III.—(Security of persons and property; and exemption from military service.)—"The citizens of each of the high contracting parties shall receive, in the States and Territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives, on their submitting themselves to the conditions imposed upon the natives.

"They shall, however, be exempt in their respective territories from compulsory military service, either on land or sea, in the regular forces, or in the national guard, or in the militia. They shall likewise be exempt from any judicial or municipal office, and from any contribution whatever, in kind or in money, to be levied in compensation for personal services."

ARTICLE IV.—(No embargo without compensation.)—"The citizens of neither of the contracting parties shall be liable, in the States or Territories of the other, to any embargo, nor shall they be detained with their vessels, cargoes, merchandise, or effects, for any military expedition, nor for any public or private purpose whatsoever, without allowing to those interested a sufficient indemnification previously agreed upon when possible."

ARTICLE V.—(No discriminations in duties, drawbacks or bounties.)—"The high contracting parties agree that whatever kind of produce, manufactures, or merchandise of any foreign country can be from time to time lawfully imported into the United States, in their own vessels, may be also imported in Italian vessels; that no other or higher duties upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of one country or the other; and, in like manner, that whatsoever kind of produce, manufactures or merchandise of any foreign country can be from

time to time lawfully imported into Italy in its own vessels, may be also imported in vessels of the United States, and that no higher or other duties upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other; and they further agree that whatever may be lawfully exported and re-exported from the one country, in its own vessels, to any foreign country, may in the like manner be exported or re-exported in the vessels of the other country, and the same bounties, duties, and drawbacks shall be allowed and collected, whether such exportation or re-exportation be made in vessels of the United States or of Italy."

ARTICLE VI.—No discriminating duties on imports or exports.

ARTICLE VII.—Vessels of one nation may go from one port to another of the other to discharge cargo, but not engage in the coasting trade.

ARTICLE VIII.—Certain vessels are to be exempt from the payment of tonnage duties.

ARTICLE IX.—Protection to be given to shipwrecked vessels.

ARTICLE X.—(Vessels may complete their crews.)—"Vessels of either of the contracting parties shall have liberty, within the territories and dominions of the other, to complete their crew, in order to continue their voyage, with sailors articled in the country, provided they submit to the local regulations and their enrollment be voluntary."

ARTICLE XI.—Vessels captured by pirates to be restored.

ARTICLE XII.—(Private property exempt from capture in maritime war.)—"The high contracting parties agree that, in the unfortunate event of a war between them, the private property of their respective citizens and subjects, with the exception of contraband of war, shall be exempt from capture or seizure, on the high seas or elsewhere, by the armed vessels or by the military forces of either party; it being understood that this exemption shall not extend to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of either party."

ARTICLE XIII.—A blockade to be legal must be so invested as to create an evident danger to attempt to enter the port.

ARTICLE XIV.—Vessels sailing for a blockaded port in igno-

rance of a blockade shall be turned away, with an endorsement on their papers; the same rule shall apply to vessels leaving such port with a cargo laden after the blockade is established.

ARTICLE XV.—(List of contraband articles.)

"1. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fusees, rifles, carbines, pistols, pikes, swords, sabers, lances, spears, halberds, bombs, grenades, powder, matches, balls, and all other things belonging to, and expressly manufactured for, the use of these arms.

"2. Infantry belts, implements of war and defensive weapons, clothes cut or made up in a military form and for a military use.

"3. Cavalry belts, war saddles and holsters.

"4. And generally all kinds of arms and instruments of iron, steel, brass, and copper, or of any other materials manufactured, prepared, and formed expressly to make war by sea or land."

ARTICLE XVI.—Citizens of one State, being neutral, may sail with their ships "with all manner of liberty and security, no distinction being made who are the proprietors of the merchandise laden thereon," to ports of the enemy of the other.

The principle of free ships, free goods, is affirmed; and the neutral flag shall cover persons except officers or soldiers in the actual service of the enemy. But this shall apply to those Powers only who recognize this principle.

ARTICLE XVII.—Proof of the nationality of vessels shall be the papers which the laws of either State require.

ARTICLES XVIII. and XIX.—The usual rule in respect to the right of search, and convoy.

ARTICLE XX.—Commanders of ships of war shall be answerable for injury to persons or property.

ARTICLE XXI.—(Rights of persons in case of war between the contracting parties—This article is not to be annulled or suspended on any pretence.)—"If by any fatality, which cannot be expected, and which may God avert, the two contracting parties should be engaged in a war with each other, they have agreed and do agree, now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior, to arrange their business, and

transport their effects wherever they please, with the safe conduct necessary to protect them, and their property, until they arrive at the ports designated for their embarkation. And all women and children, scholars of every faculty, cultivators of the earth, artisans, mechanics, manufacturers, and fishermen, unarmed and inhabiting the unfortified towns, villages, or places, and, in general, all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the belligerents in whose power, by the events of war, they may happen to fall; but, if it be necessary that anything should be taken from them for the use of such belligerent, the same shall be paid for at a reasonable price.

"And it is declared that neither the pretence that war dissolves treaties, nor any other whatever, shall be considered as annulling or suspending this article; but, on the contrary, that the state of war is precisely that for which it is provided, and during which its provisions are to be sacredly observed as the most acknowledged obligations in the law of nations."

ARTICLE XXII.—The usual rule is to be applied to personal property of the citizens of one State in the territory of the other; and as to real estate, the privileges of the most favored nation shall be reciprocally granted.

ARTICLE XXIII.—(Courts of justice to be open to citizens of either country.)—"The citizens of either party shall have free access to the courts of justice, in order to maintain and defend their own rights, without any other conditions, restrictions, or taxes than such as are imposed upon the natives. They shall, therefore, be free to employ, in defence of their rights, such advocates, solicitors, notaries, agents, and factors as they may judge proper, in all their trials at law; and such citizens or agents shall have free opportunity to be present at the decisions and sentences of the tribunals in all cases which may concern them, and likewise at the taking of all examinations and evidences, which may be exhibited in the said trials."

ARTICLE XXIV.—In respect to commerce and navigation, the most favored nation rule to be applied.

ARTICLE XXV.—The treaty to continue in force for five

years, and thereafter for twelve months after notice to terminate it.

ARTICLE XXVI.—Ratifications.

Signed by
GEORGE P. MARSH.
VISCONTI VENOSTA.[1]

RUSSIA, 1824.

CONVENTION RELATIVE TO NAVIGATION, FISHING, AND TRADING IN THE PACIFIC OCEAN AND TO ESTABLISHMENTS ON THE NORTHWEST COAST.

Concluded April 17, 1824. Ratifications exchanged at Washington, January 11, 1825. Proclaimed January 12, 1825.

ARTICLE I.—(Navigation and fisheries of the Pacific.)—"It is agreed that, in any part of the Great Ocean, or South Sea, the respective citizens or subjects of the high contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles."

ARTICLE II.—(Illicit trade.)—"With a view of preventing the rights of navigation and of fishing exercised upon the Great Ocean by the citizens and subjects of the high contracting Powers from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian establishment, without the permission of the governor or commander; and that, recipro-

[1] Other treaties with Italy are a consular convention, 1868, superseded by the convention of 1878 and 1881 (see Consular Treaties); a convention for the extradition of criminals, 1868, with supplements in 1869 and 1884, (see Extradition Treaties); a declaration for the protection of trade-marks, 1882.

cally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the northwest coast."

ARTICLE III.—(Establishments to be formed by citizens of the United States or Russia.)—"It is moreover agreed that, hereafter, there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishment upon the Northwest coast of America, nor in any of the islands adjacent, to the north of fifty-four degrees and forty minutes of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel."

ARTICLE IV.—(Interior seas.)—"It is, nevertheless, understood that during a term of ten years, counting from the signature of the present convention, the ships of both Powers, or which belong to their citizens or subjects respectively, may reciprocally frequent without any hindrance whatever, the interior seas, gulfs, harbors, and creeks, upon the coast mentioned in the preceding article, for the purpose of fishing and trading with the natives of the country."

ARTICLE V.—(Articles to be excepted from this commerce.)—"All spirituous liquors, fire-arms, other arms, powder, and munitions of war of every kind, are always excepted from this same commerce permitted by the preceding article; and the two Powers engage, reciprocally, neither to sell, nor suffer them to be sold, to the natives by their respective citizens and subjects, nor by any person who may be under their authority. It is likewise stipulated that this restriction shall never afford a pretext, nor be advanced, in any case, to authorize either search or detention of the vessels, seizure of the merchandize, or, in fine, any measures of constraint whatever towards the merchants or the crews who may carry on this commerce; the high contracting Powers reciprocally reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments in case of the contravention of this article by their respective citizens or subjects."

ARTICLE VI.—(Ratifications.)—"When this convention shall have been duly ratified by the President of the United States, with the advice and consent of the Senate, on the one part, and, on the other, by His Majesty the Emperor of all the Russias,

the ratifications shall be exchanged at Washington in the space of ten months from the date below, or sooner if possible.

"In faith whereof the respective Plenipotentiaries have signed this convention, and thereto affixed the seals of their arms.

"Done at St. Petersburg the 17—5 April of the year of Grace one thousand eight hundred and twenty-four.

"HENRY MIDDLETON.
"LE COMTE CHARLES DE NESSELRODE.
"PIERRE DE POLETICA."[1]

RUSSIA, 1854.

Convention Relative to the Rights of Neutrals at Sea.

Concluded July 22, 1854. Ratifications exchanged at Washington, October 31, 1854. Proclaimed November 1, 1854.

"The United States of America and His Majesty the Emperor of all the Russias, equally animated with a desire to maintain, and to preserve from all harm, the relations of good understanding which have at all times so happily subsisted between themselves, as also between the inhabitants of their respective States, have mutually agreed to perpetuate, by means of a formal convention, the principles of the right of neutrals at sea, which they recognize as indispensable conditions of all freedom of navigation and maritime trade."

Article I.—(Free ships make free goods—Neutral property.) "The two high contracting parties recognize as permanent and immutable the following principles, to wit:

"1st. That free ships make free goods; that is to say, that the effects or goods belonging to subjects or citizens of a Power or State at war are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war.

"2d. That the property of neutrals on board an enemy's vessel is not subject to confiscation, unless the same be contraband

[1] The ten years mentioned in article IV., having expired, Russia refused to renew the stipulations therein contained.

of war. They engage to apply these principles to the commerce and navigation of all such Powers and States as shall consent to adopt them on their part as permanent and immutable."

ARTICLE II.—(Understanding as to application of these principles.)—"The two high contracting parties reserve themselves to come to an ulterior understanding as circumstances may require, with regard to the application and extension to be given, if there be any cause for it, to the principles laid down in the 1st article. But they declare from this time that they will take the stipulations contained in said article 1 as a rule, whenever it shall become a question to judge of the rights of neutrality."

ARTICLE III.—(Other nations may accede to this treaty.)—"It is agreed by the high contracting parties that all nations which shall or may consent to accede to the rules of the first article of this convention, by a formal declaration stipulating to observe them, shall enjoy the rights resulting from such accession as they shall be enjoyed and observed by the two Powers signing this convention. They shall mutually communicate to each other the results of the steps which may be taken on the subject."

Signed by
W. L. MARCY.
EDOUARD STOECKL.

RUSSIA, 1867.

CONVENTION FOR THE CESSION OF THE RUSSIAN POSSESSIONS IN NORTH AMERICA TO THE UNITED STATES.

Concluded March 30, 1867. Ratifications exchanged at Washington, June 20, 1867. Proclaimed June 20, 1867.

"The United States of America and His Majesty the Emperor of all the Russias, being desirous of strengthening, if possible, the good understanding which exists between them, have, for that purpose, appointed as their Plenipotentiaries, the President of the United States, William H. Seward, Secretary of State; and His Majesty the Emperor of all the Russias, the

Privy Counsellor Edouard de Stoeckl, his Envoy Extraordinary and Minister Plenipotentiary to the United States;

"And the said Plenipotentiaries, having exchanged their full powers, which were found to be in due form, have agreed upon and signed the following articles:

ARTICLE I.—(Cession of territory—Boundaries.)—"His Majesty the Emperor of all the Russias agrees to cede to the United States, by this Convention, immediately upon the exchange of the ratifications thereof, all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28—16, 1825, and described in Articles III. and IV. of said convention, in the following terms:

"'Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 133d degree of west longitude, (meridian of Greenwich,) the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude, (of the same meridian;) and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean.

"'IV. With reference to the line of demarcation laid down in the preceding article, it is understood—

"'1st. That the island called Prince of Wales Island shall belong wholly to Russia,' (now, by this cession to the United States.)

"'2d. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the

British possessions and the line of coast which is to belong to Russia as above mentioned, (that is say, the limit to the possessions ceded by this convention,) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom."

"The western limit within which the territories and dominion conveyed are contained passes through a point in Behring's Straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's Straits and Behring's Sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in the southwesterly direction, so as to pass midway between the island of Atton and the Copper Island of the Kormondorski couplet or group, in the North Pacific Ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian."

ARTICLE II.—(Rights included in the cession of territory and dominion.)—"In the cession of territory and dominion made by the preceding article are included the right of property in all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private individual property. It is, however, understood and agreed, that the churches which have been built in the ceded territory by the Russian Government, shall remain the property of such members of the Greek Oriental Church resident in the territory as may choose to worship therein. Any Government, archives, papers, and documents relative to the territory and dominion aforesaid, which may now be existing there, will be left in the possession of the agent of the United States; but an authenticated copy of such of them as may be required will be, at all times, given by the United States to the Russian

Government, or to such Russian officers or subjects as they may apply for."

ARTICLE III.—(Rights of inhabitants.)—"The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but, if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country."

ARTICLES IV. and V.—Delivery of territory and military posts.

ARTICLE VI.—(Payment—Territory to be unincumbered.)—Amount to be paid, "seven million two hundred thousand dollars in gold." And the territory to be "unincumbered by any reservations, privileges, franchises, grants, or possessions, etc."

ARTICLE VII.—Ratifications.[1]

Signed by
WILLIAM H. SEWARD.
EDOUARD DE STOECKL.

OTHER EUROPEAN STATES.

[The end aimed at in this collection of treaties and conventions is to select those which have a historical interest for the student of American diplomacy as well as those which are or have been representative of the commercial and foreign policy of the United States. For this object, it is not deemed necessary to insert a great number of treaties which are simply repetitions of one another, and this is true more especially of commercial treaties. Of the treaties with European countries

[1] Other treaties with Russia are a treaty of commerce and navigation, in 1832, and a treaty of extradition, 1893. See Extradition Treaties.

not given above in this group, the following brief statement is, therefore, believed to be sufficient.]

AUSTRIA—HUNGARY—.(1) The first treaty with Austria was one of Commerce and Navigation, concluded August 27, 1829, extended by the convention of May 8, 1848, to the subject of the disposal of property by the citizens of one nation in the territory of the other. (2) A treaty of Extradition, July 3, 1856. (See Extradition Treaties.) (3) A consular convention, July 11, 1870. (See Consular Conventions). (4) A convention concerning Naturalization, September 20, 1870. (See Naturalization Treaties). (5) A Convention relative to trade-marks, November 25, 1871.

BELGIUM.—(1) Treaties of Commerce and Navigation, November 10, 1845; July 17, 1858, and March 8, 1875. (2) A convention relative to import duties and capitalization of the Scheldt Dues. By the 14th article of this convention, "The United States, in view of the proposition of Belgium to regulate, by a common accord, the capitalization of the Scheldt dues consents to contribute to this capitalization under the following conditions:

"*a.* The capital sum shall not exceed thirty-six millions of francs.

"*b.* Belgium shall assume for its part one-third of that amount.

"*c.* The remainder shall be apportioned among the other States, *pro rata* to their navigation in the Scheldt.

"*d.* The proportion of the United States, to be determined in accordance with this rule, shall not exceed the sum of two millions seven hundred and seventy-nine thousand francs, etc."

(3) Treaty for the Extinguishment of the Scheldt dues, July 20, 1863. By this treaty Belgium, and the Netherlands renounce forever the dues established upon navigation, in the Scheldt and its mouths, and the king of the Belgians engages to pay the sum of 17,141,640 florins. The proportion of the United States is regulated by the treaty of May 20, 1863. (4) Naturalization Convention, November 16, 1868. (See Naturalization Treaties.) (5) Consular Convention, December 5, 1868. (See Consular Conventions.) (6) Extradition Treaties, March 19, 1874, and June 13, 1882. (See Extradition Treaties.) (7) Convention concerning trade-marks, 1884.

GERMAN EMPIRE.—Convention respecting consuls and trade-marks, negotiated by George Bancroft and B. König, December 11, 1871. (See Consular Conventions.)

GERMAN STATES.—Treaties with the minor German States concerning the subjects of (1) the Abolition of the Droit d'Aubaine, (2) Consuls, (3) Extradition, and (4) Naturalization, will be found mentioned under the special groups of treaties relating to those subjects.

With Hanover, treaties of Commerce and Navigation were concluded, May 20, 1840, and June 10, 1846.

With the Hanseatic Republics (Lubeck, Bremen, and Hamburg), a treaty of Friendship, Commerce, and Navigation, December 20, 1827, and an additional article, June 4, 1828.

These States now form a part of the German Empire.

GREECE.—Treaty of Commerce and Navigation, December 10–22, 1837.

NETHERLANDS.—(1) Treaty of Amity and Commerce, negotiated by John Adams, October 8, 1782. This treaty followed closely the Plan of Treaties and is practically the same as the Treaty of Commerce with France, of 1778. It is interesting historically in that it was negotiated and concluded during the period of the war of independence, and from the fact that the Netherlands was the second State with which the United States entered into treaty relations. (2) Convention concerning vessels recaptured. It is agreed by this treaty that vessels of either nation recaptured by privateers of the other shall be restored to the first proprietor, if such vessels have not been twenty-four hours in the hands of the enemy, on the payment of one-third of the value of ship and cargo to the captor as salvage; if more than twenty-four hours in the hands of the enemy, they shall belong entirely to the captor. In case the vessel recapturing is a ship of war, the captured vessel shall be restored to the owner, he paying one-thirtieth part if recaptured within twenty-four hours, and one tenth part, if after twenty-four hours possession by the enemy. (3) Treaty of Commerce and Navigation, January 19, 1839, and August 26, 1852, which are still in force. (4) Consular Treaties, January 22, 1855, and May 23, 1878. (See Consular Conventions.) (5) Extradition of Criminals. (See Extradition Treaties.)

PORTUGAL.—(1) Treaty of Commerce and Navigation, August

26, 1840. (2) Treaty providing for the payment of claims and the settlement of the dispute with reference to the *General Armstrong*, February 26, 1851. The sum of $91,727 was to be paid by Portugal in settlement of claims; and the case of the *General Armstrong* was to be referred to a friendly power. By a subsequent agreement the Emperor Napoleon III. was chosen, and the decision was in favor of Portugal. (See Snow's Cases and Opinions on International Law, § 38.)

Roumania.—Convention concerning the Rights and Duties of Consuls, June 17, 1881.

Sardinia.—Treaty of Commerce and Navigation, November 26, 1838. Articles XV., XVI., and XVII. refer to the rights and duties of consuls; Article XVIII. to the disposal of personal property and real estate.

Servia.—(1) Convention for facilitating and developing commercial relations, October 14, 1881. (2) Consular Convention, October 14, 1881.

Sweden.—Treaty of Amity and Commerce, April 3, 1783. This treaty is similar to the previous commercial treaties with France and the Netherlands.

Sweden and Norway.—(1) Treaty of Amity and Commerce, September 4, 1816. The Senate rejected the 3d, 4th, and 6th articles relating to reciprocal trade. (2) Treaty of Commerce and Navigation, July 4, 1827 (still in force). (3) Extradition, March 21, 1860. (4) Naturalization, May 26, 1869.

Swiss Confederation.—(1) Convention for the mutual abolition of the Droit d'Aubaine and taxes on Emigration, May 18, 1847. (See Droit d'Aubaine.) (2) Friendship, Commerce, and Extradition.

Two Sicilies.—(1) Convention for the settlement of claims growing out of the depredations inflicted upon American commerce by Murat during the years 1809, 1810, 1811, and 1812 October 14, 1832, and December 26, 1835. (2) Treaty of Commerce and Navigation, December 1, 1845. (3) Convention relative to the Rights of Neutrals at sea, January 13, 1855. Article I.—"The two high contracting parties recognize as permanent and immutable the following principles, to wit: 1st. That free ships make free goods; . . . with the exception of contraband of war. 2d. That the property of neutrals on board an enemy's vessel is not subject to confiscation unless the same be con-

traband of war. They engage to apply these principles to the commerce and navigation of all such Powers and States as shall consent to adopt them on their part as permanent and immutable."

(4) Convention of Amity, Commerce, and Navigation, and for the Extradition of Criminals, October 1, 1855.

III.

TREATIES AND CONVENTIONS

WITH

ASIATIC AND AFRICAN STATES.

BARBARY STATES.

[The early treaties with the Barbary States being of little historical interest, aside from the circumstances attending their negotiation, only one—the first in date, with Morocco will here be given in full.]

MOROCCO, 1787.

TREATY OF PEACE AND FRIENDSHIP.

Concluded January, 1787. Ratified by the Continental Congress, July 18, 1787.

"In the name of Almighty God.

"This is a treaty of peace and friendship established between us and the United States of America, which is confirmed, and which we have ordered to be written in this book, and sealed with our royal seal, at our court of Morocco, on the twenty-fifth day of the blessed month of Shaban, in the year one thousand two hundred, trusting in God it will remain permanent."

ARTICLE I.—(Emperor's assent to the treaty.)—"We declare that both parties have agreed that this treaty, consisting of twenty-five articles, shall be inserted in this book, and delivered

to the Honorable Thomas Barclay, the agent of the United States, now at our court, with whose approbation it has been made, and who is duly authorized on their part to treat with us concerning all the matters contained therein."

ARTICLE II.—(Commissions from an enemy.)—"If either of the parties shall be at war with any nation whatever, the other party shall not take a commission from the enemy, nor fight under their colors."

ARTICLE III.—(Case of captures.)—"If either of the parties shall be at war with any nation whatever, and take a prize belonging to that nation, and there shall be found on board subjects or effects belonging to either of the parties, the subjects shall be set at liberty, and the effects returned to the owners. And if any goods belonging to any nation, with whom either of the parties shall be at war, shall be loaded on vessels belonging to the other party, they shall pass free and unmolested, without any attempt being made to take or detain them."

ARTICLE IV.—(Vessels to have passports.)—"A signal or pass shall be given to all vessels belonging to both parties, by which they are to be known when they meet at sea; and if the commander of a ship of war of either party shall have other ships under his convoy, the declaration of the commander shall alone be sufficient to exempt any of them from examination."

ARTICLE V.—(Right of search at sea.)—"If either of the parties shall be at war, and shall meet a vessel at sea belonging to the other, it is agreed, that if an examination is to be made, it shall be done by sending a boat with two or three men only; and if any gun shall be fired, and injury done without reason, the offending party shall make good all damages."

ARTICLE VI.—(Captured Americans to be set free.)—"If any Moor shall bring citizens of the United States, or their effects, to His Majesty, the citizens shall immediately be set at liberty, and the effects restored; and in like manner, if any Moor, not a subject of these dominions, shall make prize of any of the citizens of America, or their effects, and bring them into any of the ports of His Majesty, they shall be immediately released, as they will then be considered as under His Majesty's protection."

ARTICLE VII.—(Vessels in port to be supplied.)—"If any ves-

sel of either party shall put into a port of the other, and have occasion for provisions or other supplies, they shall be furnished without any interruption or molestation."

ARTICLE VIII.—(Vessels putting in port to repair.)—"If any vessel of the United States shall meet with a disaster at sea, and put into one of our ports to repair, she shall be at liberty to land and re-load her cargo, without paying any duty whatever."

ARTICLE IX.—(Shipwrecks.)—"If any vessel of the United States shall be cast on shore on any part of our coasts, she shall remain at the disposition of the owners, and no one shall attempt going near her without their approbation, as she is then considered particularly under our protection; and if any vessel of the United States shall be forced to put into any of our ports by stress of weather or otherwise, she shall not be compelled to land her cargo, but shall remain in tranquillity until the commander shall think proper to proceed on his voyage."

ARTICLE X.—(Vessels engaged within gun-shot of fort.)—"If any vessel of either of the parties shall have an engagement with a vessel belonging to any of the Christian Powers within gun-shot of the forts of the other, the vessel so engaged shall be defended and protected as much as possible until she is in safety; and if any American vessel shall be cast on shore on the coast of Wadnoon, or any coast thereabout, the people belonging to her shall be protected and assisted, until, by the help of God, they shall be sent to their country."

ARTICLE XI.—(Navigation in time of war.)—"If we shall be at war with any Christian Power, and any of our vessels sail from the ports of the United States, no vessel belonging to the enemy shall follow until twenty-four hours after the departure of our vessels; and the same regulation shall be observed towards the American vessels sailing from our ports, be their enemies Moors or Christians."

ARTICLE XII.—(Ships of war not to be examined.)—"If any ship of war belonging to the United States shall put into any of our ports, she shall not be examined on any pretence whatever, even though she should have fugitive slaves on board, nor shall the governor or commander of the place compel them to be brought on shore on any pretext, nor require any payment for them."

ARTICLE XIII.—(Ships of war to be saluted.)—"If a ship of war of either party shall put into a port of the other and salute, it shall be returned from the fort with an equal number of guns, not with more or less."

ARTICLE XIV.—(Most favored nation.)—"The commerce with the United States shall be on the same footing as is the commerce with Spain, or as that with the most favored nation for the time being; and their citizens shall be respected and esteemed, and have full liberty to pass and repass our country and seaports whenever they please, without interruption."

ARTICLE XV.—(Privileges of merchants.)—"Merchants of both countries shall employ only such interpreters, and such other persons to assist them in their business, as they shall think proper. No commander of a vessel shall transport his cargo on board another vessel; he shall not be detained in port longer than he may think proper; and all persons employed in loading or unloading goods, or in any other labor whatever, shall be paid at the customary rates, not more and not less."

ARTICLE XVI.—(Exchange of prisoners in time of war.)—"In case of a war between the parties, the prisoners are not to be made slaves, but to be exchanged one for another, captain for captain, officer for officer, and one private man for another; and if there shall prove a deficiency on either side, it shall be made up by the payment of one hundred Mexican dollars for each person wanting. And it is agreed that all prisoners shall be exchanged in twelve months from the time of their being taken, and that this exchange may be effected by a merchant or any other person authorized by either of the parties."

ARTICLE XVII.—(Privileges of merchants.)—"Merchants shall not be compelled to buy or sell any kind of goods but such as they shall think proper; and may buy and sell all sorts of merchandise, but such as are prohibited to the other Christian nations."

ARTICLE XVIII.—(Goods to be examined before sent on board.)—"All goods shall be weighed and examined before they are sent on board, and to avoid all detention of vessels, no examination shall afterwards be made, unless it shall first be proved that contraband goods have been sent on board, in which case the persons who took the contraband goods on board shall be

punished according to the usage and custom of the country, and no other person whatever shall be injured, nor shall the ship or cargo incur any penalty or damage whatever."

ARTICLE XIX.—(Vessels not to be detained.)—"No vessel shall be detained in port on any pretence whatever, nor be obliged to take on board any article without the consent of the commander, who shall be at full liberty to agree for the freight of any goods he takes on board."

ARTICLE XX.—(Settlement of disputes between Americans.)—"If any of the citizens of the United States, or any persons under their protection, shall have any disputes with each other, the Consul shall decide between the parties, and whenever the Consul shall require any aid or assistance from our Government, to enforce his decisions, it shall be immediately granted to him."

ARTICLE XXI.—(Crimes.)—"If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor should kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered the Consul assisting at the trial; and if any delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever."

ARTICLE XXII.—(Estates of deceased citizens.)—"If an American citizen shall die in our country, and no will shall appear, the Consul shall take possession of his effects; and if there shall be no Consul, the effects shall be deposited in the hands of some person worthy of trust, until the party shall appear who has a right to demand them; but if the heir to the person deceased be present, the property shall be delivered to him without interruption; and if a will shall appear, the property shall descend agreeable to that will as soon as the Consul shall declare the validity thereof.

ARTICLE XXIII.—(Consuls and their privileges.)—"The Consuls of the United States of America shall reside in any seaport of our dominions that they shall think proper; and they shall be respected and enjoy all the privileges which the Consuls of any other nation enjoy; and if any of the citizens of the United States shall contract any debts or engagements, the Consul shall not be in any manner accountable for them, unless he shall have given a promise in writing for the payment or

fulfilling thereof, without which promise, in writing, no application to him for any redress shall be made."

ARTICLE XXIV.—(Case of war.)—"If any differences shall arise by either party infringing on any of the articles of this treaty, peace and harmony shall remain notwithstanding in the fullest force, until a friendly application shall be made for an arrangement, and until that application shall be rejected, no appeal shall be made to arms. And if a war shall break out between the parties, nine months shall be granted to all the subjects of both parties, to dispose of their effects and retire with their property. And it is further declared, that whatever indulgences, in trade or otherwise, shall be granted to any of the Christian Powers, the citizens of the United States shall be entitled to them."

ARTICLE XXV.—(Duration of treaty.)—"This treaty shall continue in full force, with the help of God, for fifty years.

"We have delivered this book into the hands of the beforementioned Thomas Barclay, on the first day of the blessed month of Ramadan, in the year one thousand two hundred.

"I certify that the annexed is a true copy of the translation made by Isaac Cardoza Nuñez, interpreter at Morocco, of the treaty between the Emperor of Morocco and the United States of America.

"THOS. BARCLAY."

MOROCCO, 1880.

CONVENTION BETWEEN THE UNITED STATES, AUSTRIA, BELGIUM, DENMARK, GERMANY, FRANCE, GREAT BRITAIN, ITALY, MOROCCO, THE NETHERLANDS, PORTUGAL, SPAIN, AND SWEDEN AND NORWAY, FOR THE ESTABLISHMENT OF THE RIGHT OF PROTECTION IN MOROCCO.

Concluded July 3, 1880. Ratifications of a majority of the signatory powers exchanged at Tangiers, May 1, 1881. Ratification of the United States delivered to Minister for Foreign Affairs of Morocco, March 9, 1882; Proclaimed December 21, 1881.

ARTICLE I.—(Conditions of protection.) "The conditions

under which protection may be conceded are those established in the British and Spanish treaties with the Government of Morocco, and in the convention made between that Government, France and other powers in 1863, with the modifications introduced by the present convention."

ARTICLE II.—(Interpreters and employees of the heads of legations.)—"Foreign Representatives at the head of a Legation may select their interpreters and employees from among the subjects of Morocco or others.

"These protected persons shall be subject to no duty, impost or tax whatever, other than those stipulated in articles 12 and 13."

ARTICLE III.—(Consuls' employees.)—"Consuls, Vice-consuls or Consular Agents having charge of a post, and residing within the territory of the Sultan of Morocco, shall be allowed to select but one interpreter, one soldier and two servants from among the subjects of the Sultan, unless they may require a native secretary.

"These protected persons shall, in like manner, be subject to no duty, impost or tax whatever, other than those stipulated in articles 12 and 13."

ARTICLE IV.—(Subjects of Morocco as United States Consular agents).—"If a Representative shall appoint a subject of the Sultan to the office of Consular Agent in a town on the coast, such agent shall be respected and honored, as shall the members of his family occupying the same dwelling with him, and they, like him, shall be subject to no duty, impost or tax whatever, other than those stipulated in articles 12 and 13; but he shall not have the right to protect any subjects of the Sultan other than the members of his own family.

"He may, however, for the exercise of his functions, have a protected soldier.

"Officers in acting charge of Vice Consulates being subjects of the Sultan, shall, during the exercise of their functions, enjoy the same rights as Consular Agents who are subjects of the Sultan."

ARTICLE V.—(Rights of diplomatic officers; civil suits; persons under prosecution for offences).—"The Government of Morocco recognizes the right of Ministers, Chargés d'Affaires and other Representatives, which is granted to them by treaties

to select the persons whom they employ, either in their own service or that of their governments, unless such persons shall be sheiks or other employees of the Government of Morocco, such as soldiers of the line or of the cavalry, excepting the Maghaznias appointed as their guard. In like manner they shall not be permitted to employ any subject of Morocco who is under prosecution.

"It is understood that civil suits commenced before protection, shall be terminated before the courts which have instituted such proceedings. The execution of the sentence shall suffer no hindrance. Nevertheless, the local authorities of Morocco, shall take care to communicate, without delay, the sentence pronounced, to the Legation, Consulate or Consular Agency upon which the protected person is dependent.

"As to those persons formerly protected, who may have a suit which was commenced before protection was withdrawn from them, their case shall be tried by the court before which it was originally brought.

"The right of protection shall not be exercised towards persons under prosecution for an offence or crime, before they have been tried by the authorities of the country, or before their sentence, if any has been pronounced, has been executed."

ARTICLE VI.—(Protection extends to family.)—"Protection shall extend to the family of the person protected. His dwelling shall be respected.

"It is understood that the family is to consist only of the wife, the children, and the minor relatives dwelling under the same roof.

"Protection shall not be hereditary. A single exception, which was established by the convention of 1863, but which is not to create a precedent, shall be maintained in favor of the Benchimol family.

"Nevertheless, if the Sultan of Morocco shall grant another exception, each of the contracting powers shall be entitled to claim a similar concession."

ARTICLE VII.—(Foreign representatives to furnish names of persons protected by them.)—"Foreign representatives shall inform the Sultan's Ministers of Foreign Affairs, in writing, of any selections of an employee made by them.

"They shall furnish annually to the said Minister a list of

the names of the persons protected by them or by their Agents throughout the States of the Sultan of Morocco.

"This list shall be transmitted to the local authorities, who shall consider as persons enjoying protection only those whose names are contained therein."

ARTICLE VIII.—(Consular officers to furnish names of persons protected by them.)—"Consular officers shall transmit each year to the authorities of the district in which they reside a list, bearing their seal, of the persons protected by them. These authorities shall transmit it to the Minister of Foreign Affairs, to the end that, if it be not conformable to the regulations, the Representatives at Tangier may be informed of the fact.

"A consular officer shall be required to give immediate information of any changes that may have taken place among the persons protected by his Consulate."

ARTICLE IX.—(Certain persons not protected; Crimes.)—"Servants, farmers and other native employees of native secretaries and interpreters shall not enjoy protection. The same shall be the case with Moorish employees or servants of foreign subjects.

"Nevertheless, the local authorities shall not arrest an employee or servant of a native officer in the service of a Legation or Consulate, or of a foreign subject or protected person, without having notified the authority upon which he is dependent.

"If a subject of Morocco in the service of a foreign subject shall kill or wound any person, or violate his domicile, he shall be arrested immediately, but the diplomatic or consular authority under which he is shall be notified without delay."

ARTICLE X.—(Brokers.)—"Nothing is changed with regard to the situation of brokers, as established by the treaties and by the convention of 1863, except what is stipulated, relative to taxes, in the following articles."

ARTICLE XI.—(Privileges of foreigners in Morocco in regard to property.)—"The right to hold property is recognized in Morocco as belonging to all foreigners.

"The purchase of property must take place with the previous consent of the Government, and the title of such property shall be subject to the forms prescribed by the laws of the country.

"Any question that may arise concerning this right shall be decided according to the same laws, with the privilege of appeal to the Minister of Foreign Affairs stipulated in the treaties."

ARTICLE XII.—(Agricultural tax.)—"Foreigners and protected persons who are the owners or tenants of cultivated land, as well as brokers engaged in agriculture, shall pay the agricultural tax. They shall send to their Consul annually, an exact statement of what they possess delivering into his hands the amount of the tax.

"He who shall make a false statement, shall be fined double the amount of the tax that he would regularly have been obliged to pay for the property not declared. In case of repeated offense this fine shall be doubled.

"The nature, method, date and apportionment of this tax shall form the subject of a special regulation between the Representatives of the Powers and the Minister of Foreign Affairs of His Shereefian Majesty."

ARTICLE XIII.—(Gate-tax.)—"Foreigners, protected persons and brokers owning beasts of burden shall pay what is called the gate-tax. The apportionment and the manner of collecting this tax which is paid alike by foreigners and natives, shall likewise form the subject of a special regulation between the Representatives of the Powers and the Minister of Foreign Affairs of His Shereefian Majesty.

"The said tax shall not be increased without a new agreement with the Representatives of the Powers."

ARTICLE XIV.—(Mediation of officers of legations and consulates.)—"The mediation of interpreters, native secretaries or soldiers of the different Legations or Consulates, when persons who are not under the protection of the Legation or Consulate are concerned shall be admitted only when they are the bearers of a document signed by the head of a mission or by the consular authority."

ARTICLE XV.—(Return of a subject of Morocco who has been naturalized in a foreign country.)—"Any subject of Morocco who has been naturalized in a foreign country, and who shall return to Morocco, shall after having remained for a length of time equal to that which shall have been regularly necessary for him to obtain such naturalization, choose between entire

submission to the laws of the Empire and the obligation to quit Morocco, unless it shall be proved that his naturalization in a foreign country was obtained with the consent of the Government of Morocco.

"Foreign naturalization heretofore acquired by subjects of Morocco according to the rules established by the laws of each country, shall be continued to them as regards all its effects, without any restriction."

ARTICLE XVI.—(No irregular or unofficial protection; protection under certain cases.)—"No irregular or unofficial protection shall be granted in future. The authorities of Morocco will recognize no protection, of any kind whatever, save such as expressly provided for in this convention.

"Nevertheless, the exercise of the customary right of protection shall be reserved for those cases only in which it may be desired to reward signal services rendered by a native of Morocco to a foreign power, or for other altogether exceptional reasons.

"The Minister of Foreign Affairs at Tangier shall be previously informed of the nature of the services, and notified of the intention to reward them, in order that he may, if need be, present his observations thereon; yet the final decision shall be reserved for the Government to which the service shall have been rendered.

"The number of persons thus protected shall not exceed twelve for each power, and this number is fixed as the maximum unless the consent of the Sultan shall be obtained.

"The status of persons who have obtained protection in virtue of the custom which is henceforth to be regulated by this stipulation shall be without limitation of the number of persons belonging to this class and now so protected, the same for themselves and their families as that which is established for other protected persons."

ARTICLE XVII.—(Most favored nation.)—"The right to the treatment of the most favored nation is recognized by Morocco as belonging to all the powers represented at the Madrid conference."

ARTICLE XVIII.—(Ratifications.)—"This convention shall be ratified. The ratifications shall be exchanged at Tangier with as little delay as possible.

"By exceptional consent of the high contracting parties the stipulations of this convention shall take effect on the day on which it is signed at Madrid.

"In faith whereof the respective plenipotentiaries have signed this convention, and have thereunto affixed the seals of their arms.

"Done at Madrid, in thirteen originals, this third day of July, one thousand eight hundred and eighty.

"LUCIUS FAIRCHILD,
"on the part of the United States." [1]

[1] Before the revolutionary war England had protected in the Mediterranean, the commerce of her American colonies. During the war the United States had sought to procure the assistance of France to the same end; the latter country, however, promised only to employ her good offices, etc. After the peace, vessels of the United States were exposed undefended to the depredations of the Barbary pirates. The European States paid tribute to these corsairs, and the question arose whether the United States should do the same. "It rests with Congress," said Jefferson, "to decide between war, tribute, and ransom, as the means of establishing our Mediterranean commerce." In May, 1784, Congress gave full authority to Adams, Franklin, and Jefferson, to negotiate treaties of amity and commerce with the Barbary powers, and in the following year they were authorized to send agents to those courts, provided the whole expense did not exceed 80,000 dollars. Barclay, who was sent to Morocco, succeeded in concluding the treaty given above This treaty was renewed, when about to expire, for another period of fifty years.

ALGIERS.—In 1785, two American vessels were captured by Algerine cruisers, and their crews, twenty-one in number, reduced to slavery. In 1791, fourteen of these persons were still in captivity, and the government, the next year, began active measures for their release. But by the capture of ten American vessels in 1793, the number of captives was increased to one hundred and fifteen. And when the treaty with Algiers was finally concluded, September 5, 1795, it had cost the United States in ransoms, presents, and expenses $992,436.25, besides, for the future, a tribute of $21,600 a year in naval stores, $20,000 on the presentation of a consul, and biennial presents to the officers of the government, estimated at $17,500. (See Schuyler's "American Diplomacy," p. 213.)

In 1815, the United States declared war against Algiers, and sent a naval squadron to the Mediterranean. The Dey was compelled to conclude a treaty, by the 2d article of which tribute of all kinds was abolished.

TRIPOLI.—A treaty was concluded with Tripoli, in 1796, similar to that

CHINA, 1844.

TREATY OF PEACE, AMITY AND COMMERCE.

Concluded July 3, 1844. Ratifications exchanged December 31, 1845. Proclaimed April 18, 1846.

[This first treaty with China followed the forcible opening of certain ports of that Empire by the united efforts of Great Britain and France. The five ports opened to the commerce of the United States were Kwang-chow, Amoy, Fuchow, Ningpo, and Shanghai. This treaty was superseded by that of 1858.]

with Algiers, except that the cost was less—$56,000—and tribute was not provided for. The 11th article of this treaty is peculiar. "As the government of the United States of America is not, in any sense, founded on the Christian religion; as it has, in itself, no character of enmity against the laws, religion or tranquillity of Musselmen; and as the said States never have entered into any war or act of hostility against any Mahometan nation; it is declared, by the parties, that no pretext arising from any religious opinions, shall ever produce an interruption of the harmony existing between the two countries."

The Bashaw became discontented, and continued to demand more money, and finally declared war against the United States. In 1802 Congress recognized the existence of war with Tripoli, and a naval force was sent to the Mediterranean and the Tripolitan war followed. A treaty was concluded, June 4, 1805, the United States paying $60,000 for the ransom of prisoners.

TUNIS.—A treaty with Tunis was concluded, in August, 1797, at a cost of $107,000. This treaty was somewhat altered by a convention of 1824.

REMARKS.—On the 30th of July, 1802, the Secretary of the Treasury stated that the expenditures to re-establish and support our commerce in the Mediterranean had reached the sum of $2,046,137.22. This was before the Tripolitan war. Tribute was moreover continued for some years longer to Algiers.

See on the subject of the Barbary States; Bancroft Davis' Notes: Lyman's "Diplomacy of the United States," II., 335; Schuyler's "American Diplomacy," 193.

CHINA, 1858.

TREATY OF PEACE, AMITY AND COMMERCE.

Concluded June 18, 1858. Ratifications exchanged at Pehtang, August 16, 1859. Proclaimed January 26, 1860.

ARTICLE I.—Declaration of amity.

ARTICLE II.—The original treaty, as ratified by the President of the United States, shall be deposited at Pekin, in charge of the Privy Council; and as ratified by the Emperor of China, shall be deposited at Washington, in charge of the Secretary of State.

ARTICLE III.—Promulgation of treaty.

ARTICLE IV.—The Minister of the United States "shall at all times have the right to correspond on terms of perfect equality and confidence with the officers of the Privy Council at the Capital, or with the Governors-General of the Two Kwangs, or of the "Two Kiangs."

ARTICLE V.—(Formalities to be observed by Ministers of the United States; residence and suite of United States Ministers.)—"The Minister of the United States of America in China, whenever he has business, shall have the right to visit and sojourn at the capital of His Majesty the Emperor of China, and there confer with a member of the Privy Council, or any other high officer of equal rank deputed for that purpose, on matters of common interest and advantage. His visits shall not exceed one in each year, and he shall complete his business without unnecessary delay. He shall be allowed to go by land or come to the mouth of the Peiho, into which he shall not bring ships of war, and he shall inform the authorities at that place in order that boats may be provided for him to go on his journey. He is not to take advantage of this stipulation to request visits to the capital on trivial occasions. Whenever he means to proceed to the capital, he shall communicate, in writing, his intention to the Board of Rites at the capital, and thereupon the said Board

shall give the necessary directions to facilitate his journey and give him necessary protection and respect on his way. On his arrival at the capital he shall be furnished with a suitable residence prepared for him, and he shall defray his own expenses; and his entire suite shall not exceed twenty persons, exclusive of his Chinese attendants, none of whom shall be engaged in trade."

ARTICLE VI.—Most favored nation principle to be applied to the privileges of the United States Minister.

ARTICLE VII.—Forms of communication between officers of the two nations. No presents shall ever be demanded.

ARTICLE VIII.—Rules as to personal intercourse between the representatives of the two nations.

ARTICLE IX.—The vessels of the United States shall enjoy all suitable facilities for procuring supplies, &c., in Chinese open ports. And if attacked by pirates, the national vessels of the United States may pursue the pirates, and if captured, deliver them over for trial and punishment.

ARTICLE V.—(Privileges of United States Consuls in China.) —"The United States of America shall have the right to appoint Consuls and other Commercial Agents for the protection of trade, to reside at such places in the dominions of China as shall be agreed to be opened; who shall hold official intercourse and correspondence with the local officers of the Chinese Government (a Consul or a Vice-Consul in charge taking rank with an Intendant of circuit or a Prefect), either personally or in writing, as occasions may require, on terms of equality and reciprocal respect. And the Consuls and local officers shall employ the style of mutual communication. If the officers of either nation are disrespectfully treated or aggrieved in any way by the other authorities, they have the right to make representation of the same to the superior officers of the respective Governments, who shall see that full inquiry and strict justice shall be had in the premises. And the said Consuls and Agents shall carefully avoid all acts of offence to the officers and people of China. On the arrival of a Consul duly accredited at any port in China, it shall be the duty of the Minister of the United States to notify the same to the Governor-General of the province where such port is, who shall forthwith recognize the said Consul and grant him authority to act."

ARTICLE XI.—(Privileges of United States citizens in China.)—"All citizens of the United States of America in China, peaceably attending to their affairs, being placed on a common footing of amity and good will with the subjects of China, shall receive and enjoy for themselves and everything appertaining to them, the protection of the local authorities of Government, who shall defend them from all insult or injury of any sort. If their dwellings or property be threatened or attacked by mobs, incendiaries, or other violent or lawless persons, the local officers, on requisition of the Consul, shall immediately despatch a military force to disperse the rioters, apprehend the guilty individuals, and punish them with the utmost rigor of the law. Subjects of China guilty of any criminal act towards citizens of the United States shall be punished by the Chinese authorities according to the laws of China; and citizens of the United States, either on shore or in any merchant vessel, who may insult, trouble, or wound the persons or injure the property of Chinese, or commit any other improper act in China, shall be punished only by the Consul or other public functionary thereto authorized, according to the laws of the United States. Arrests in order to trial may be made by either the Chinese or the United States authorities."

ARTICLE XII.—(Privileges of citizens of the United States residing at open ports.)—"Citizens of the United States, residing or sojourning at any of the ports open to foreign commerce, shall be permitted to rent houses and places of business, or hire sites on which they can themselves build houses or hospitals, churches and cemeteries. The parties interested can fix the rent by mutual and equitable agreement; the proprietors shall not demand an exorbitant price, nor shall the local authorities interfere, unless there be some objections offered on the part of the inhabitants respecting the place. The legal fees to the officers for applying their seal shall be paid. The citizens of the United States shall not unreasonably insist on particular spots, but each party shall conduct with justice and moderation. Any desecration of the cemeteries by natives of China shall be severely punished according to law. At the places where the ships of the United States anchor, or their citizens reside, the merchants, seamen or others, can freely

pass and repass in the immediate neighborhood; but, in order to the preservation of the public peace, they shall not go into the country to the villages and marts to sell their goods unlawfully, in fraud of the revenue."

ARTICLE XIII.—United States vessels wrecked or stranded on the Chinese coast are to be protected. Such vessels shall also be as far as possible protected from the depredations of pirates.

ARTICLE XIV.—(Designation of open ports.)—"The citizens of the United States are permitted to frequent the ports and cities of Canton and Chau-chau or Swatau, in the province of Kwang-tung, Amoy, Fuh-chau, and Tai-wan, in Formosa, in the province of Fuh-kien, Ningpo, in the province of Cheh-kiang, and Shanghai, in the province of Kiang-su, and any other port or place hereafter by treaty with other powers or with the United States opened to commerce, and to reside with their families and trade there, and to proceed at pleasure with their vessels and merchandise from any of these ports to any other of them. But said vessels shall not carry on a clandestine and fraudulent trade at other ports of China not declared to be legal, or along the coasts thereof; and any vessel under the American flag violating this provision, shall, with her cargo, be subject to confiscation to the Chinese Government; and any citizen of the United States who shall trade in any contraband article of merchandise shall be subject to be dealt with by the Chinese Government without being entitled to any countenance or protection from that of the United States; and the United States will take measures to prevent their flag from being abused by the subjects of other nations as a cover for the violation of the laws of the empire."

ARTICLE XV.—(Commerce at open ports—Tariff of duties.)—"At each of the ports open to commerce citizens of the United States shall be permitted to import from abroad, and sell, purchase and export all merchandise of which the importation or exportation is not prohibited by the laws of the empire. The tariff of duties to be paid by citizens of the United States, on the export and import of goods from and into China, shall be the same as was agreed upon at the treaty of Wanghia, except so far as it may be modified by treaties with other nations; it being expressly agreed that citizens of the United States shall

never pay higher duties than those paid by the most favored nation."

ARTICLE XVI.—Certain tonnage duties to be paid by American vessels.

ARTICLE XVII.—Citizens of the United States shall be allowed to engage pilots, servants, and teachers.

ARTICLE XVIII.—Customs officers may be stationed on board United States vessels in Chinese ports. Deserters from such vessels shall be returned. Chinese criminals are not to take refuge on American vessels.

ARTICLE XIX.—Papers of vessels of the United States casting anchor in Chinese harbors must be deposited with Consul within forty-eight hours. Permits to land cargo—Tonnage duties, due after said forty-eight hours.

ARTICLE XX.—Customs examinations in case of dispute to be made by Consul and Superintendent of Customs.

ARTICLE XXI.—Re-exportation of goods permitted.

ARTICLE XXII. and XXIII.—Regulations for the payment of tonnage and customs duties, and transshipment of goods.

ARTICLE XXIV.—Regulation for the collection of debts; resort had to Consul. Neither government shall be held responsible.

ARTICLE XXV.—Liberty to employ Chinese teachers.

ARTICLE XXVI.—(Treatment of United States vessels in time of war between China and another power—Privileges only to be enjoyed by preserving strict neutrality.)—"Relations of peace and amity between the United States and China being established by this treaty, and the vessels of the United States being admitted to trade freely to and from the ports of China open to foreign commerce, it is further agreed that, in case at any time hereafter China should be at war with any foreign nation whatever, and should for that cause exclude such nation from entering her ports, still the vessels of the United States shall not the less continue to pursue their commerce in freedom and security, and to transport goods to and from the ports of the belligerent powers, full respect being paid to the neutrality of the flag of the United States, provided that the said flag shall not protect vessels engaged in the transportation of officers or soldiers in the enemy's service, nor shall said flag be fraudulently used to enable the enemy's ships, with

their cargoes, to enter the ports of China; but all such vessels so offending shall be subject to forfeiture and confiscation to the Chinese Government."

ARTICLE XXVII.—(Jurisdiction in questions of rights of property and persons.)—"All questions in regard to rights, whether of property or person, arising between citizens of the United States in China shall be subject to the jurisdiction and regulated by the authorities of their own Government; and all controversies occurring in China between citizens of the United States and the subjects of any other government shall be regulated by the treaties existing between the United States and such Governments, respectively, without interference on the part of China."

ARTICLE XXVIII.—(Communications between citizens of the United States and Chinese local officers.)—"If citizens of the United States have special occasion to address any communication to the Chinese local officers of Government, they shall submit the same to their Consul or other officer, to determine if the language be proper and respectful, and the matter just and right, in which event he shall transmit the same to the appropriate authorities for their consideration and action in the premises. If subjects of China have occasion to address the Consul of the United States, they may address him directly at the same time they inform their own officers, representing the case for his consideration and action in the premises; and if controversies arise between citizens of the United States and subjects of China, which cannot be amicably settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations, acting in conjunction. The extortion of illegal fees is expressly prohibited. Any peaceable persons are allowed to enter the court in order to interpret, lest injustice be done."

ARTICLE XXIX.—Religious freedom granted to citizens of the United States in China.

ARTICLE XXX.—Most favored nation privileges in commerce navigation, and political rights secured to the United States,

The treaty is to be ratified within one year.

"Done at Tien-tsin this eighteenth day of June, in the year of our Lord one thousand eight hundred and fifty-eight, and the Independence of the United States of America the eighty-

second, and in the eighth year of Hien-fung, fifth month, and eighth day.

"WILLIAM B. REED.
"KNEILIANG.
"HWASHANA."

CHINA, 1868.

TREATY CONCERNING TRADE, CONSULS, RELIGIOUS TOLERATION AND EMIGRATION, BEING ADDITIONAL ARTICLES TO THE TREATY OF JUNE 18, 1858.

Concluded July 28, 1868. Ratifications exchanged at Pekin, November 23, 1869. Proclaimed February 5, 1870.

ARTICLE I.—Treatment of citizens in time of war.

ARTICLE III.—China may appoint Consuls.

ARTICLE V.—(Voluntary emigration of Chinese only permitted.)—"The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively, from the one country to the other for purposes of curiosity, of trade or as permanent residents. The high contracting parties therefore join in reprobating any other than an entirely voluntary emigration for these purposes. They consequently agree to pass laws making it a penal offence for a citizen of the United States or Chinese subjects to take Chinese subjects either to the United States or to any other foreign country, or for a Chinese subject or citizen of the United States to take citizens of the United States to China or to any other foreign country without their free and voluntary consent, respectively."

ARTICLE VIII.—(Citizens of the United States are not to intervene in the affairs of the Chinese Government.)—"The United States, always disclaiming and discouraging all practices of unnecessary dictation and intervention by one nation in the affairs or domestic administration of another, do hereby

freely disclaim and disavow any intention or right to intervene in the domestic administration of China in regard to the construction of railroads, telegraphs or other material internal improvements. On the other hand, His Majesty the Emperor of China reserves to himself the right to decide the time and manner and circumstances of introducing such improvements within his dominions. With this mutual understanding, it is agreed by the contracting parties that if at any time hereafter His Imperial Majesty shall determine to construct or cause to be constructed works of the character mentioned, within the empire, and shall make application to the United States or any other western power for facilities to carry out that policy, the United States will, in that case, designate and authorize suitable engineers to be employed by the Chinese Government, and will recommend to other nations an equal compliance with such application, the Chinese Government in that case protecting such engineers in their persons and property and paying them a reasonable compensation for their service.

"Done at Washington the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and sixty-eight.

"WILLIAM H. SEWARD.
"ANSON BURLINGAME.
"CHIN-KANG.
"SUN CHIA-KU."

CHINA, 1880.

Treaty Regulating Chinese Immigration into the United States.

Concluded November 17, 1880. Ratifications exchanged at Pekin, July 19, 1881. Proclaimed October 5, 1881.

"Whereas, in the eighth year of Hsien Feng, Anno Domini 1858, a treaty of peace and friendship was concluded between the United States of America and China, and to which were added, in the seventh year of Tung Chih, Anno Domini 1868, certain supplementary articles to the advantage of both parties,

which supplementary articles were to be perpetually observed and obeyed :—and

"Whereas the Government of the United States, because of the constantly increasing immigration of Chinese laborers to the territory of the United States, and the embarrassments consequent upon such immigration, now desires to negotiate a modification of the existing Treaties which shall not be in direct contravention of their spirit:" . . . . . .

ARTICLE I.—(Limitation and suspension of immigration of Chinese laborers.)—"Whenever in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse."

ARTICLE II.—(Privileges of Chinese subjects in the United States.)—"Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation."

ARTICLE III.—(Treatment of the Chinese in the United States.)—"If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its power to devise measures for their protection and to secure to them the same rights, privileges, immunities and

exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty."

ARTICLE IV.—(Mitigation of hardships of Chinese to be effected by United States Government.)—"The high contracting Powers having agreed upon the foregoing articles, whenever the Government of the United States shall adopt legislative measures in accordance therewith, such measures will be communicated to the Government of China. If the measures as enacted are found to work hardship upon the subjects of China, the Chinese Minister at Washington may bring the matter to the notice of the Secretary of State of the United States, who will consider the subject with him; and the Chinese Foreign Office may also bring the matter to the notice of the United States Minister at Pekin and consider the subject with him, to the end that mutual and unqualified benefit may result.

"In faith whereof the respective Plenipotentiaries have signed and sealed the foregoing at Pekin in English and Chinese, being three originals of each text of even tenor and date, the ratifications of which shall be exchanged at Pekin within one year from date of its execution.

"Done at Pekin, this seventeenth day of November, in the year of our Lord 1880. Kuangsii, sixth year, tenth moon, fifteenth day.

"JAMES B. ANGELL.
"JOHN F. SWIFT.
"WM. HENRY TRESCOT.
"PAO CHUN.
"LI HUNGTSAO."

HAWAIIAN ISLANDS, 1875.

CONVENTION RESPECTING COMMERCIAL RECIPROCITY.

Concluded January 30, 1875. Ratifications exchanged at Washington, June 3, 1875. Proclaimed June 3, 1875.

"The United States of America and His Majesty the King of the Hawaiian Islands, equally animated by the desire to

strengthen and perpetuate the friendly relations which have heretofore uniformly existed between them, and to consolidate their commericial intercourse, have resolved to enter into a Convention for Commercial Reciprocity."

ARTICLE I.—(Hawaiian products to be admitted free of duty.) —"For and in consideration of the rights and privileges granted by His Majesty the King of the Hawaiian Islands in the next succeeding article of this convention and as an equivalent therefor, the United States of America agree to admit all the articles named in the following schedule, the same being the growth and manufacture or produce of the Hawaiian Islands, into all the ports of the United States free of duty.

"Arrow-root; castor oil; bananas, nuts, vegetables, dried, and undried, preserved and unpreserved; hides and skins undressed; rice; pulu; seeds, plants, shrubs or trees; muscovado, brown, and all other unrefined sugar, meaning hereby the grades of sugar heretofore commonly imported from the Hawaiian Islands and now known in the markets of San Francisco and Portland as 'Sandwich Island sugar,' syrups of sugarcane, melado, and molasses; tallow."

ARTICLE II.—(American products to be admitted free of duty.)—"For and in consideration of the rights and privileges granted by the United States of America in the preceding article of this convention, and as an equivalent therefor, His Majesty, the King of the Hawaiian Islands hereby agrees to admit all the articles named in the following schedule, the same being the growth, manufacture or produce of the United States of America, into all the ports of the Hawaiian Islands, free of duty:—

"Agricultural implements; animals; beef, bacon, pork, ham and all fresh, smoked or preserved meats; boots and shoes; grain, flour, meal, and bran, bread and breadstuffs, of all kinds; bricks, lime, and cement; butter, cheese, lard, tallow, bullion; coal; cordage, naval stores, including tar, pitch, resin, turpentine raw and rectified; copper and composition sheathing; nails and bolts; cotton and manufactures of cotton bleached, and unbleached, and whether or not colored, stained, painted or printed; eggs; fish and oysters, and all other creatures living in the water, and the products thereof; fruits, nuts, and vegetables, green, dried or undried, preserved or unpre-

served; hardware; hides, furs, skins and pelts, dressed or undressed; hoop iron, and rivets, nails, spikes and bolts, tacks, brads or sprigs; ice, iron and steel and manufactures thereof; leather; lumber and timber of all kinds, round, hewed, sawed, and unmanufactured in whole or in part; doors, sashes and blinds; machinery of all kinds, engines and parts thereof; oats and hay; paper, stationery and books, and all manufactures of paper or of paper and wood; petroleum and all oils for lubricating or illuminating purposes; plants, shrubs, trees and seeds; rice; sugar, refined or unrefined; salt; soap; shooks, staves, and headings; wool and manufactures of wool, other than ready-made clothing; wagons and carts, for the purposes of agriculture or of drayage; wood and manufactures of wood or of wood and metal except furniture either upholstered or carved and carriages; textile manufactures, made of a combination of wool, cotton, silk or linen, or of any two or more of them other than when ready-made clothing; harness and all manufactures of leather; starch; and tobacco; whether in leaf or manufactured."

ARTICLE III.—(Evidence as to growth and manufacture how established.)—"The evidence that articles proposed to be admitted into the ports of the United States of America, or the ports of the Hawaiian Islands, free of duty, under the first and second articles of this convention, are the growth, manufacture or produce of the United States of America or of the Hawaiian Islands respectively, shall be established under such rules and regulations and conditions for the protection of the revenue as the two Governments may from time to time respectively prescribe."

ARTICLE IV.—(No export duty to be imposed on free articles—No lease of Hawaiian ports, and no other nation to have same privileges as the United States.)—"No export duty or charges shall be imposed in the Hawaiian Islands or in the United States, upon any of the articles proposed to be admitted into the ports of the United States or the ports of the Hawaiian Islands free of duty, under the first and second articles of this convention. It is agreed, on the part of His Hawaiian Majesty, that, so long as this treaty shall remain in force, he will not lease or otherwise dispose of or create any lien upon any port, harbor, or other territory in his dominions,

or grant any special privilege or rights of use therein, to any other power, state or government, nor make any treaty by which any other nation shall obtain the same privileges, relative to the admission of any articles free of duty, hereby secured to the United States."

ARTICLE V.—(Duration of convention.)—"The present convention shall take effect as soon as it shall have been approved and proclaimed by His Majesty the King of the Hawaiian Islands, and shall have been ratified and duly proclaimed on the part of the Government of the United States, but not until a law to carry it into operation shall have been passed by the Congress of the United States of America. Such assent having been given and the ratifications of the convention having been exchanged as provided in article VI. the convention shall remain in force for seven years, from the date at which it may come into operation; and further, until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said term of seven years, or at any time thereafter."

ARTICLE VI.—(Ratifications.)—"The present convention shall be duly ratified, and the ratifications exchanged at Washington city, within eighteen months from the date hereof, or earlier if possible.

"In faith whereof the respective Plenipotentiaries of the high contracting parties have signed this present convention, and have affixed thereto their respective seals.

"Done in duplicate, at Washington, the thirtieth day of January, in the year of our Lord, one thousand eight hundred and seventy-five.

"HAMILTON FISH.
"ELISHA H. ALLEN.
"HENRY A. P. CARTER."

HAWAIIAN ISLANDS, 1884.

CONVENTION EXTENDING THE DURATION OF THE TREATY OF 1875; AND GRANTING A COALING STATION TO THE UNITED STATES.

Concluded December 6, 1884. Ratifications exchanged at Washington, November 9, 1887. Proclaimed November 9, 1887.

ARTICLE I.—(Duration of the convention of January 30, 1875, extended.)—"The High Contracting Powers agree, that the time fixed for the duration of the said convention, shall be definitely extended for a term of seven years from the date of the exchange of ratifications hereof, and further, until the expiration of twelve months after either of the High Contracting Powers shall give notice to the other of its wish to terminate the same, each of the High Contracting Powers being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter."

ARTICLE II.—(Right to establish a coaling station.)—"His Majesty the King of the Hawaiian Islands grants to the Government of the United States the exclusive right to enter the harbor of Pearl River in the Island of Oahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid.

"Signed by
"FRED'K T. FRELINGHUYSEN.
"HENRY A. P. CARTER." [1]

[1] The first treaty with the Hawaiian Islands was concluded December 20, 1849. This was a treaty of friendship, commerce, navigation, and for the extradition of criminals, and contained the usual stipulations on these subjects.

JAPAN.

TREATY OF PEACE, AMITY AND COMMERCE, MARCH 31, 1854.

By this treaty the ports of Simoda and Hakodade "are granted by the Japanese as ports for the reception of American ships, where they can be supplied with wood, water, provisions and coal, and other articles their necessities may require, as far as the Japanese have them." (Article IV.) But "wood, water, provisions, coal, and goods required, shall only be procured through the agency of Japanese officers appointed for that purpose, and in no other manner." (Article VIII.)

Ships of the United States resorting to the ports open to them shall be permitted to exchange gold and silver coin and articles of goods for other articles of goods, under such regulations as shall be temporarily established by the Japanese government for that purpose." . . .

A treaty of 1857 was superseded and abrogated by a treaty of the following year.

1858.

TREATY OF AMITY AND COMMERCE.

Concluded July 29, 1858. Ratifications exchanged at Washington, May 22, 1860. Proclaimed May 23, 1890.

ARTICLE I.—A diplomatic agent of the United States may reside at Yedo, and consuls may reside at all the ports of Japan open to American commerce, etc.

ARTICLE II.—The President of the United States, at the request of the Japanese government, will act as a friendly mediator between the government of Japan and any European power.

ARTICLE III.—In addition to the ports of Simoda and Hakodade, the following ports shall be opened: Kanagawa, Nagasaki, Nee-e-gata, and Hiogo. Simoda shall be closed six months after the opening of Kanagawa. In all the foregoing ports and towns American citizens may permanently reside. Americans

shall be allowed to reside at Yedo and Osaca for the purposes of trade only.

No rice or wheat shall be exported from Japan as cargo.

ARTICLE IV.—Duties to be paid on imports into Japan. The importation of opium is prohibited.

ARTICLE VI.—Americans to be under the jurisdiction of their consul.

ARTICLE VII.—In the opened harbors of Japan, Americans may go where they please, within certain limits, generally 10 ri, the ri being equal to 4275 yards, American measure.[1]

1864.

CONVENTION FOR PAYMENT OF $3,000,000 TO THE GOVERNMENTS OF THE UNITED STATES, GREAT BRITAIN, FRANCE, AND THE NETHERLANDS, AS INDEMNITIES AND EXPENSES.

Concluded October 22, 1864. Proclaimed April 9, 1866.

This indemnity was the payment by Japan of the expenses incurred by the four powers mentioned above in quelling the insurrection of a local ruler of Japan, Prince Choshu, and for damages that he had inflicted upon their commerce. The United States received an amount equal to that of the other States, but the actual expense and estimated damages on their part were only $151,348. The several instalments received from Japan amounted to $785,000. By Act of Congress, February 22, 1883, the President was authorized to pay this sum to the government of Japan. At this time the fund with accumulated interest amounted to $1,837,823.78.

[1] The treaty contains fourteen articles; then follow regulations under which American trade is to be conducted in Japan.

A convention was concluded for the reduction of duties in Japan.

1866.

Convention Establishing a Tariff of Duties between the United States, Great Britain, France, The Netherlands, and Japan.

By this convention the Japanese import and export duties, with reference to the four powers mentioned above, were fixed and regulated. This tariff was subject to revision after 1872.

1878.

Convention Revising Certain Portions of Existing Commercial Treaties.

Concluded July 25, 1878. Proclaimed April 8, 1879.

Article I.—The United States agree to the annulment of the treaty of 1866 regulating the tariff of Japan.

"It is further understood and agreed that from the time when this present convention shall take effect, the United States will recognize the exclusive power and right of the Japanese government to adjust the customs tariff and taxes and to establish regulations appertaining to foreign commerce in the open ports of Japan."

Article II.—No export duties are to be levied.

Article VII.—Japan to open additional ports.

Article X.—"The present convention shall take effect when Japan shall have concluded such conventions or revisions of existing treaties with all the other powers holding relations with Japan as shall be similar in effect to the present convention, and such new conventions or revisions shall also go into effect." [1]

[1] Japan has not as yet been able to fulfil this condition.

A Treaty of Extradition was concluded April 20, 1886. (See Extradition Treaties.)

THE OTTOMAN PORTE.

1830.

TREATY OF COMMERCE AND NAVIGATION.

Concluded May 7, 1830. Proclaimed February 4, 1832.

ARTICLE I.—Merchants to have the privileges of those of the most favored nation.

ARTICLE II.—Consuls may be appointed.

ARTICLE III.—American merchants may employ semsars (brokers).

ARTICLE IV.—(Settlement of disputes—Jurisdiction over American citizens.)—"If litigations and disputes should arise between subjects of the Sublime Porte and citizens of the United States, the parties shall not be heard, nor shall judgment be pronounced unless the American Dragoman be present. Causes in which the sum may exceed five hundred piasters, shall be submitted to the Sublime Porte, to be decided according to the laws of equity and justice. Citizens of the United States of America, quietly pursuing their commerce, and not being charged or convicted of any crime or offence, shall not be molested; and even when they may have committed some offence [they shall not be arrested] and put in prison, by the local authorities, but [they shall be tried by their minister, or consul, and punished according to their offence], following, in this respect, the usage observed towards other Franks."

ARTICLE V.—American merchant vessels may go and come with safety in the dominions of the Porte. Ministers and consuls of the United States shall not protect the rayahs of the Sublime Porte.

ARTICLE VII.—American merchant vessels may freely pass the Dardanelles, in like manner as vessels of the most favored nation.

ARTICLE VIII.—Merchant vessels shall not be impressed, for the shipment of troops, etc.

ARTICLE IX.—Shipwrecks.

"Given the 14th day of the moon Zilcaade, and in the year of the Hegira 1245, corresponding with the 7th day of May, of the year of 1830 of the Christian æra.

"MOHAMMED HAMED." [1]

OTHER ASIATIC AND AFRICAN STATES.

CONGO.—(1) Declaration as to the intention of the International Association of the Congo, and the recognition of its flag by the United States, April 22, 1884. The flag is blue with a golden star in the center. (2) Amity, Commerce, and Navigation, January 24, 1891.

COREA.—Treaty of Peace, Amity, Commerce, and Navigation, May 22, 1882.

LEW CHEW.—Compact of Friendship and Commerce, July 11, 1854.

[1] In 1868 the Turkish authorities claimed jurisdiction over two Americans charged with offences against the Ottoman government. This laim was resisted by the American Minister, E. Joy Morris, on the ground of the stipulations of article IV. of the treaty of 1830. The Minister for Foreign Affairs replied that the words in brackets of that article were not in the original Turkish text of the treaty; and the Ottoman government has since adhered to that view. On the other hand, the government of the United States has procured a number of translations of that text, in no one of which some form does not appear of distinct admission of the intervention of the minister or consuls to inflict, administer or apply punishment in the case of American citizens. (See Davis' Notes.)

A treaty of Commerce and Navigation was concluded with the Ottoman Porte, February 25, 1862, to continue for twenty-eight years, either party having the right, however, to give notice of revision or discontinuance at the end of fourteen years and again at the end of twenty-one years. By the 22d article, a tariff was stipulated for the Ottoman Empire, subject to revision at the end of every period of seven years.

In 1874, the Ottoman government gave notice to terminate the treaty, and again in 1883; but the United States insisted that these notices were irregular, not being given at the times provided for by the treaty. Turkey has, however, considered the treaty abrogated.

Other treaties with the Porte are a treaty of extradition, 1874; and a protocol respecting the right of foreigners to hold real estate in the Ottoman Empire, 1874.

LIBERIA.—Treaty of Commerce and Navigation, October 21, 1862.

MADAGASCAR.—(1) Treaty of Commerce and Navigation, February 14, 1867; stipulating for right of domicil, of persons and property; establishing tariff duties in Madagascar; jurisdiction of consuls. (2) Treaty of Peace, Friendship, and Commerce, May 13, 1881; the United States acquire right of coaling station, and rights of trade, and to lease land.

MUSCAT.—Treaty of Amity and Commerce, September 21, 1833. American vessels may enter all the ports of the Sultan; most favored nation privileges.

ORANGE FREE STATE.—Treaty of Friendship, Commerce, and Extradition, December 22, 1871. Most favored nation privileges for consuls.

PERSIA. —Treaty of Friendship, and Commerce, December 13, 1856.

SAMOA.—Treaty of Friendship and Commerce, January 17, 1878. The United States acquire right of coaling and naval station in the port of Pagopago. (Article II.); Consular jurisdiction, etc.

By the Conference of Berlin, 1889, between the United States, Germany and England it was agreed that the Samoan Islands should be neutral territory, in which the citizens and subjects of the three signatory powers have equal rights of residence and trade. A Supreme Court of Justice was established, consisting of one judge, styled Chief Justice of Samoa, and named by the three powers, or failing that, by the King of Sweden and Norway.

SIAM.—(1) Treaty of Amity and Commerce, March 20, 1833. (2) Treaty of Amity and Commerce, May 29, 1856. Americans acquire right to trade in all seaports of Siam, but may reside only at Bangkok, where a consul may also reside. Opium may be imported free of duty, but can only be sold to the opium farmer or his agents. Tariff of duties arranged. This treaty was modified in the 1st article, in 1867. (3) Agreement regulating the liquor traffic in Siam.

TONGA.—Treaty of Amity, Commerce, and Navigation, October 2, 1886. In the 2d article appears the following clause, after stipulating for the most favored nation privileges: "it being understood that the Parties hereto affirm the principle

of the law of nations that no privilege granted for equivalent or on account of propinquity or other special conditions comes under the stipulations herein contained as to favored nations." This was doubtless inserted on account of the claim of England to the privileges of our reciprocity treaty with Hawaii. By the 6th article a coaling station is to be leased on Tonga Islands.

ZANZIBAR.—Treaty concerning import duty and consuls.

IV.

TREATIES AND CONVENTIONS WITH LATIN AMERICAN STATES.

COLOMBIA, 1824.

Treaty of Peace, Amity, Navigation and Commerce.

Concluded October 3, 1824. Ratifications exchanged at Washington, May 27, 1825. Proclaimed May 31, 1825.

Article I.—Declaration of amity.

Article II.—(Most favored nation principle.)—"The United States of America and the Republic of Colombia desiring to live in peace and harmony with all the other nations of the earth, by means of a policy frank and equally friendly with all, engage mutually not to grant any particular favor to other nations, in respect to commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely if the concession was freely made, or on allowing the same compensation if the concession was conditional.

Article III.—(Freedom of commerce.)—"The citizens of the United States may frequent all the coasts and countries of the Republic of Colombia, and reside and trade there, in all sorts of produce, manufactures and merchandise, and shall pay no other or greater duties, charges or fees whatsoever, than the most favored nation is or shall be obliged to pay; and they shall enjoy all the rights, privileges and exemptions in navigation and commerce which the most favored nation does or shall enjoy, submitting themselves, nevertheless, to the laws, decrees and usages there established, and to which are submitted the subjects and citizens of the most favored nations."

The citizens of the Republic of Colombia shall enjoy like privileges in the territories of the United States.

ARTICLE IV.—(Privileges of citizens of one nation in the territory of the other.)—"It is likewise agreed that it shall be wholly free for all merchants, commanders of ships and other citizens of both countries, to manage themselves their own business, in all the ports and places subject to the jurisdiction of each other, as well with respect to the consignment and sale of their goods and merchandise by whole sale or retail, as with respect to the loading, unloading and sending off their ships they being in all these cases to be treated as citizens of the country in which they reside, or at least to be placed on a footing with the subjects or citizens of the most favored nation."

ARTICLE V.—(Embargo not permitted.)—"The citizens of neither of the contracting parties shall be liable to any embargo nor be detained with their vessels, cargoes, merchandises or effects, for any military expedition, nor for any public or private purpose whatever, without allowing to those interested a sufficient indemnification."

ARTICLE VI.—Vessels of the one nation in distress, or pursued by pirates or enemies, shall find asylum in the ports of the other.

ARTICLE VII.—Property captured by pirates, if found in the territory of either nation, shall be restored to the owner.

ARTICLE VIII.—Vessels shipwrecked or foundered, shall receive assistance, etc.

ARTICLE IX.—Protection to property of citizens of either contracting party found in the territory of the other. In the case of real estate, if the law prevents aliens from holding it, they shall have three years in which to dispose of it.

ARTICLE X.—Special protection of citizens of one State in the territory of the other.

ARTICLE XI.—There shall be entire religious freedom for citizens of one State, being within the jurisdiction of the other.

ARTICLE XII.—Either State being neutral may trade with the enemies of the other, and its ships may also go from one port of the enemy to another, without molestation. "And it is hereby stipulated that free ships shall also give freedom to goods," contraband excepted. The same liberty is extended to persons on board free ships, with the exception of officers or

soldiers. But the stipulation that the flag shall cover the property shall be understood as applying to those powers only who recognize this principle.

ARTICLE XIII.—(The neutral flag not to protect enemy's property.)—"It is likewise agreed that in the case where the neutral flag of one of the contracting parties shall protect the property of the enemies of the other, by virtue of the above stipulation, it shall always be understood that the neutral property found on board such enemies' vessels shall be held and considered as enemies' property, and, as such, shall be liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war, or even afterward, if it were done without the knowledge of it; but the contracting parties agree, that two months having elapsed after the declaration, their citizens shall not plead ignorance thereof. On the contrary, if the flag of the neutral does not protect the enemy's property, in that case the goods and merchandises, of the neutral, embarked in such enemy's ships, shall be free."

ARTICLE XIV.—(Contraband articles.)—"This liberty of navigation and commerce shall extend to all kinds of merchandises, excepting those only which are distinguished by the name of contraband; and under this name of contraband or prohibited goods shall be comprehended—

"First. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fusees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds and grenades, bombs, powder, matches, balls and all other things belonging to the use of these arms;

"Secondly. Bucklers, helmets, breastplates, coats of mail, infantry belts, and clothes made up in the form and for a military use;

"Thirdly. Cavalry belts, and horses with their furniture.

"Fourthly. And generally all kinds of arms and instruments of iron, steel, brass and copper, or of any other materials manufactured, prepared and formed expressly to make war by sea or land."

ARTICLE XV.—(Blockade.)—"It is declared that those places only are besieged or blockaded which are actually attacked by a belligerent force capable of preventing the entry of the neutral."

ARTICLE XVI.—Neutral vessels carrying contraband, may

deliver up the contraband goods, and be allowed to proceed on their voyage.

ARTICLE XVII.—Neutral vessels sailing for a blockaded port in ignorance of the blockade, may be turned away from such port but not detained, unless on a second attempt to enter it.

ARTICLE XVIII.—(Visit and search.)—"In order to prevent all kind of disorder in the visiting and examination of the ships and cargoes of both the contracting parties on the high seas, they have agreed mutually that whenever a vessel of war, public or private, shall meet with a neutral of the other contracting party, the first shall remain out of cannon shot, and may send its boat with two or three men only in order to execute the said examination of the papers concerning the ownership and cargo of the vessel, without causing the least extortion, violence or ill treatment, for which the commanders of the said armed ships shall be responsible with their persons and property; for which purpose the commanders of said private armed vessels shall, before receiving their commissions, give sufficient security to answer for all the damages they may commit. And it is expressly agreed that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting her papers, or for any other purpose whatever."

ARTICLE XIX.—(Proofs of the nationality of ships in time of war.)—It is agreed, "that in case one of them should be engaged in war, the ships and vessels belonging to the citizens of the other must be furnished with sea-letters or passports, expressing the name, property and bulk of the ship, as also the name and place of habitation of the master or commander of said vessel, in order that it may thereby appear that the ship really and truly belongs to the citizens of one of the parties; they have likewise agreed that such ships being laden, besides the said sea-letters or passports, shall also be provided with certificates containing the several particulars of the cargo, and the place whence the ship sailed, so that it may be known whether any forbidden or contraband goods be on board the same."

ARTICLE XX.—(Convoy.)—"It is further agreed that the stipulations above expressed relative to the visiting and examination of vessels, shall apply only to those which sail with-

out convoy; and when said vessels shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries, and, when they are bound to an enemy's port, that they have no contraband goods on board, shall be sufficient."

ARTICLE XXI.—Prize courts are only competent in prize cases.

ARTICLE XXII.—(Letters of marque.)—" Whenever one of the contracting parties shall be engaged in war with another State, no citizen of the other contracting party shall accept a commission, or letter of marque, for the purpose of assisting or co-operating hostilely with the said enemy against the said party so at war, under the pain of being treated as a pirate."

ARTICLE XXIII.—Six months allowed merchants to remove, in case of war between the contracting parties.

ARTICLE XXIV.—(Debts not to be confiscated.)—" Neither the debts due from individuals of the one nation to the individuals of the other, nor shares, nor moneys, which they may have in public funds, nor in public or private banks, shall ever, in any event of war or of national difference, be sequestrated or confiscated."

ARTICLE XXV.—Most favored nation principle applied to public ministers.

ARTICLES XXVI. and XXVII.—Consuls may be appointed, and shall enjoy the most favored nation privileges.

ARTICLE XXVIII.—(Rights of consuls.)—" It is likewise agreed that the Consuls, their secretaries, officers and persons attached to the service of Consuls, they not being citizens of the country in which the Consul resides, shall be exempt from all public service, and also from all kinds of taxes, imposts and contributions, except those which they shall be obliged to pay on account of commerce, or their property, to which the citizens and inhabitants, native and foreign, of the country in which they reside are subject, being in everything besides subject to the laws of the respective States. The archives and papers of the Consulates shall be respected inviolably, and under no pretext whatever shall any magistrate seize or in any way interfere with them."

ARTICLE XXX.—Agreement to form a consular convention.

ARTICLE XXXI.—(Duration of treaty—Violation of treaty.) —"The United States of America and the Republic of Colombia, desiring to make as durable as circumstances will permit the relations which are to be established between the two parties by virtue of this treaty, or general convention of peace, amity, commerce and navigation, have declared solemnly, and do agree to the following points:

"First. The present treaty shall remain in full force and virtue for the term of twelve years, to be counted from the day of the exchange of the ratifications, in all the parts relating to navigation; and in all those parts which relate to peace and friendship, it shall be permanently and perpetually binding on both powers;

"Second. If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizens shall be held personally responsible for the same, and the harmony and good correspondence between the two nations shall not be interrupted thereby, each party engaging in no way to protect the offender, or santion such violation;

"Third. If, (what, indeed, cannot be expected,) unfortunately, any of the articles contained in the present treaty shall be violated or infringed in any other way whatever, it is expressly stipulated that neither of the contracting parties will order or authorize any acts of reprisal, nor declare war against the other, on complaints of injuries or damages, until the said party considering itself offended shall first have presented to the other a statement of such injuries or damages, verified by competent proof, and demanded justice and satisfaction, and the same shall have been either refused or unreasonably delayed;

"Fourth. Nothing in this treaty contained shall, however, be construed or operate contrary to former and existing public treaties with other Sovereigns or States.

"Done in the city of Bogota, on the third day of October, in the year of our Lord one thousand eight hundred and twenty-four, in the forty-ninth year of the Independence of the United States of America, and the fourteenth of that of the Republic of Colombia.

"RICHARD CLOUGH ANDERSON, JR.
"PEDRO GUAL."

NEW GRANADA, 1846.

TREATY OF PEACE, AMITY, NAVIGATION AND COMMERCE.

Concluded December 12, 1846. Ratifications exchanged at Washington, June 10, 1848, Proclaimed June 12, 1848.

[This treaty does not differ in the main from that of 1824 with Colombia, except Article XXXV., relating to the Isthmus of Panama, which is given below.]

ARTICLE XXXV.—(Panama Canal.)—"The United States of America and the Republic of New Granada, desiring to make as durable as possible the relations which are to be established between the two parties by virtue of this treaty, have declared solemnly, and do agree to the following points:

"1st. For the better understanding of the preceding articles, it is and has been stipulated between the high contracting parties, that the citizens, vessels and merchandise of the United States shall enjoy in the ports of New Granada, including those of the part of the Granadian territory generally denominated Isthmus of Panama, from its southernmost extremity until the boundary of Costa Rica, all the exemptions, privileges and immunities concerning commerce and navigation, which are now or may hereafter be enjoyed by Granadian citizens, their vessels and merchandise; and that this equality of favors shall be made to extend to the passengers, correspondence and merchandise of the United States, in their transit across the said territory, from one sea to the other. The Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States, and for the transportation of any articles of produce, manufactures or merchandise, of lawful commerce, belonging to the citizens of the United States; that no other tolls or charges shall be levied or collected upon the citizens of the United States, or their said merchandise thus passing over any road or canal that may be

made by the Government of New Granada, or by the authority of the same, than is, under like circumstances, levied upon and collected from the Granadian citizens; that any lawful produce, manufactures or merchandise, belonging to citizens of the United States, thus passing from one sea to the other, in either direction, for the purpose of exportation to any other foreign country, shall not be liable to any import-duties whatever; or having paid such duties, they shall be entitled to drawback upon their exportation; nor shall the citizens of the United States be liable to any duties, tolls or charges of any kind, to which native citizens are not subjected for thus passing the said Isthmus. And, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages, and for the favors they have acquired by the 4th, 5th, and 6th articles of this treaty, the United States guarantee, positively, and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and, in consequence, the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

"2d. The present treaty shall remain in full force and vigor for the term of twenty years from the day of the exchange of the ratifications; and from the same day the treaty that was concluded between the United States and Colombia, on the thirteenth of October, 1824, shall cease to have effect, notwithstanding what was disposed in the first point of its 31st article.

"3d. Notwithstanding the foregoing, if neither party notifies to the other its intention of reforming any of, or all, the articles of this treaty twelve months before the expiration of the twenty years stipulated above, the said treaty shall continue binding on both parties beyond the said twenty years, until twelve months from the time that one of the parties notifies its intention of proceeding to a reform.

"4th. If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizens shall be held personally responsible for the same, and the harmony and good correspondence between the nations shall not be inter-

rupted thereby; each party engaging in no way to protect the offender, or sanction such violation.

"5th. If unfortunately any of the articles contained in this treaty should be violated or infringed in any way whatever, it is expressly stipulated that neither of the two contracting parties shall ordain or authorize any acts of reprisal, nor shall declare war against the other on complaints of injuries or damages, until the said party considering itself offended shall have laid before the other a statement of such injuries or damages, verified by competent proofs, demanding justice and satisfaction, and the same shall have been denied, in violation of the laws and of international right.

"6th. Any special or remarkable advantage that one or the other power may enjoy from the foregoing stipulation, are and ought to be always understood in virtue and as in compensation of the obligations they have just contracted, and which have been specified in the first number of this article."[1]

MEXICO, 1848.

TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT.

Concluded February 2, 1848. Ratifications exchanged at Queretaro, May 30, 1848. Proclaimed July 4, 1848.

"In the name of Almighty God:

"The United States of America and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony and mutual confidence wherein the two peoples should live as good neighbours, have for that purpose appointed their respective plenipotentiaries, that is to say: . . . .

[1] A consular convention was concluded with Colombia, May 4, 1850 (see Consular Conventions); and a claims convention, September 10, 1857, and February 10, 1864.

ARTICLE I. and II.—Declaration of peace; and provision for cessation of hostilities.

ARTICLE III.—Upon the ratification of the treaty, the blockade of Mexican ports to cease; troops of the United States to be withdrawn; and the custom-houses established in the occupied ports to be delivered to the Mexican authorities.

ARTICLE IV.—All castles, ports, places, etc., to be restored, and the final evacuation of Mexican territory to be completed in three months from the exchange of ratifications. All prisoners of war to be restored as soon as practicable.

ARTICLE V.—(Boundary line.)—"The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

"The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "*Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in* 1847, *by J. Disturnell;*" of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned Plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with

the Colorado, to a point on the coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the atlas to the voyage of the schooners Sutil and Mexicana; of which plan a copy is hereunto added, signed and sealed by the respective Plenipotentiaries.

"In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two Governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

"The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the General Government of each, in conformity with its own constitution."

ARTICLE VI.—The Gulf of California, and the Colorado river below its confluence with the Gila to be free for the passage of American vessels. A railroad or canal may be constructed along the river Gila.

ARTICLE VII.—The navigation of the Gila, and Rio Bravo below the boundary of New Mexico shall be free and common to the citizens of both countries.

ARTICLES VIII. and IX.—Mexicans residing in the ceded territory may remain or remove without molestation.

ARTICLE X.—Stricken out.

ARTICLE XI.—Incursions of savage tribes, etc. (Abrogated by the 2d article of the treaty of 1853.)

ARTICLE XII.—(Amount of money to be paid to Mexico.)—"In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of fifteen millions of dollars.

"Immediately after this treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three millions of dollars shall be paid to the said Government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by the Mexican Government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid."

ARTICLE XIII.—(United States assume payment of claims due to their citizens.)—"The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican Republic under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three; so that the Mexican Republic shall be absolutely exempt, for the future, from all expense whatever on account of the said claims."

ARTICLE XIV.—The United States furthermore discharge the Mexican Republic from all claims of citizens of the United States not heretofore decided against the Mexican Republic which may have arisen previously to the date of the signature of this treaty.

ARTICLE XV.—The United States undertake to make satisfaction for the claims mentioned in the preceding article to an amount not exceeding three and one-quarter millions of dollars.

To ascertain the amount of these claims, a commission shall be appointed by the United States, etc.

ARTICLE XVI.—(Right to fortify territory.)—"Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify for its security."

ARTICLE XVII.—The treaty of 1831 is revived, except the additional article, and except so far as it is incompatible with the present treaty; and shall continue for eight years, subject then to a one year's notice.

ARTICLES XVIII. to XX.—Deal with questions growing out of the military occupation of Mexican territory.

ARTICLE XXI.—(In case of disagreement, pacific negotiations shall be resorted to, and not reprisals or hostility.)—"If unhappily any disagreement should hereafter arise between the Governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said Governments, in the name of those nations, do promise to each other that they will endeavour, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighbourship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case."

ARTICLE XXII.—(Rules to be observed in case of war.)—"If (which is not to be expected, and which God forbid) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to

each other and to the world to observe the following rules; absolutely where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible:

"1. The merchants of either republic then residing in the other shall be allowed to remain twelve months (for those dwelling in the interior), and six months (for those dwelling at the seaports), to collect their debts and settle their affairs; during which periods they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects without molestation or hindrance, conforming therein to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take anything from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties, and the pursuit of their vocations.

"2. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant, inclement, or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships, or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles,

within convenient districts, and have comfortable quarters; and the common soldier shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for its own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished, by the party in whose power they are, with as many rations, and of the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service; the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

"And it is declared that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and, during which, its stipulations

are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations."

ARTICLE XXIII.—Ratifications.

Negotiated by N. P. TRIST.

MEXICO, 1853.

TREATY RELATIVE TO BOUNDARY, TRANSIT OF PERSONS, ETC., ACROSS THE ISTHMUS OF TEHUANTEPEC.

Concluded December 30, 1853. Ratifications exchanged at Washington, June 30, 1854. Proclaimed June 30, 1854.

ARTICLE I.—(Boundary between Mexico and the United States.)—"The Mexican Republic agrees to designate the following as her true limits with the United States for the future: Retaining the same dividing line between the two Californias as already defined and established, according to the 5th article of the treaty of Guadalupe Hidalgo, the limits between the two republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the fifth article, of the treaty of Guadalupe Hidalgo; thence, as defined in the said article, up the middle of that river to the point where the parallel of 31° 47′, north latitude crosses the same; thence due west one hundred miles; thence south to the parallel of 31° 20′ north latitude; thence along the said parallel of 31° 20′ to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado River twenty English miles below the junction of the Gila and Colorado Rivers; thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico."

ARTICLE II.—The 11th article of the treaty of 1848 annulled,

ARTICLE III.—(Mexico to be paid ten million dollars.) "In consideration of the foregoing stipulations, the Government of the United States agrees to pay to the Government of Mexico, in the city of New York, the sum of ten millions of dollars, of which seven millions shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining

three millions as soon as the boundary line shall be surveyed, marked, and established.

ARTICLE IV.—Articles VI. and VII. of the treaty of 1848 annulled.

ARTICLE VIII.—(Provisions respecting the road across the Isthmus of Tehuantepec).—"The Mexican Government having on the 5th of February, 1853, authorized the early construction of a plank and railroad across the Isthmus of Tehuantepec, and to secure the stable benefits of said transit way to the citizens and merchandize of the citizens of Mexico and the United States, it is stipulated that neither Government will oppose any obstacle to the transit of persons and merchandize of both nations: and at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations; nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States, by its agents, shall have the right to transport across the isthmus, in closed bags, the mails of the United States not intended for distribution along the line of communication; also the effects of the United States Government and its citizens, which may be intended for transit, and not for distribution on the isthmus, free of custom-house or other charges by the Mexican Government. Neither passports nor letters of security will be required of persons crossing the isthmus and not remaining in the country.

"When the construction of the railroad shall be completed, the Mexican Government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

"The two Governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that Government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

"The Mexican Government having agreed to protect with its whole power the prosecution, preservation, and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law."

ARTICLE IX.—Ratifications.

Negotiated by JAMES GADSDEN.

MEXICO, 1883.

CONVENTION PROVIDING FOR COMMERCIAL RECIPROCITY.

Concluded January 20, 1883. Ratifications exchanged at Washington, May 20, 1884. Proclaimed June 2, 1883.

ARTICLE I.—(Articles admitted into United States free of duty.)—"For and in consideration of the rights granted by the United States of Mexico to the United States of America in article second of this convention, and as an equivalent therefor, the United States of America hereby agree to admit, free of import duties whether Federal or local, all the articles named in the following schedule, into all the ports of the United States of America, and into such places on their frontier with Mexico, as may be established now or hereafter as ports of entry by the United States of America, provided that the same be the growth and manufacture or produce of the United States of Mexico.

"Animals, alive, specially imported for breeding purposes; barley, not pearl; beef; coffee; eggs; esparto and other grasses, and pulp of, for the manufacture of paper; flowers, natural of all kinds; fruits; all kinds of fresh fruits, such as oranges, lemons, pine-apples, limes, bananas, plantains, mangoes, etc.; goat-skins, raw; henequen, sisal, hemp, and other like substitutes for hemp; hide-ropes; hides, raw or uncured, whether dry, salted, or pickled, and skins, except sheep-skins, with the wool on, Angora goat-skins, raw, without the wool, and asses' skins; indiarubber, crude and milk of; indigo; ixtle or tampico fibre; jalap; leather, old scrap; logwood, berries, nuts, archil, and vegetables for dyeing or used for composing dyes; molasses; palm or cocoanut oil; quicksilver; sarsaparilla, crude; shrimps and other shell fish; straw, unmanufactured; sugar, not above number 16, Dutch standard in color; tobacco in leaf, unmanufactured; vegetables, fresh of all kinds; wood, and timber of all kinds, unmanufactured, including ship timber."

ARTICLE II.—(Articles admitted into Mexico free of duty.)—"For and in consideration of the rights granted by the United States of America in the preceding article of this convention, and as an equivalent therefor, the United States of Mexico hereby agree to admit free of duties whether Federal or local, all the articles named in the following schedule, the same being the growth, manufacture or produce of the United States of America, into all the ports of the United States of Mexico and into such places on their frontier with the United States of America as may be established now or hereafter as ports of entry by the United States of Mexico.

"Accordeons and harmonicas; anvils; asbestos for roofs; bars of steel for mines, round or octagonal; barrows and hand trucks with one or two wheels; bricks, refractory and all kinds of bricks; books, printed, unbound or bound in whole or in the greater part with paper or cloth; beams, small, and rafters of iron for roofs, provided that they cannot be made use of for other objects in which iron is employed; coal of all kinds; cars and carts with springs; coaches and cars for railways; crucibles and melting pots of all materials and sizes; cane-knives; clocks, mantel or wall; diligence and road carriages of all kinds and dimensions; dynamite; fire-pumps, engines, and ordinary pumps for irrigation and other purposes; faucets; fuse and wick for mines; feed, dry, and straw; fruits, fresh; fire-wood; fish, fresh; guano; hoes, mattocks, and their handles; houses of wood or iron, complete; hoes, common, agricultural knives without their sheaths, scythes, sickles, harrows, rakes, shovels, pick-axes, spades and mattocks for agriculture; henequen bags, on condition that they be used for subsequent exportation with Mexican products; ice; iron and steel made into rails for railways; instruments, scientific; ink, printing; iron beams; lime, hydraulic; locomotives; lithographic stones; masts and anchors, for vessels large or small; marble in blocks; marble in flags for pavements not exceeding forty centimeters in square and polished only on one side; machines and apparatus of all kinds for industrial, agricultural and mining purposes, sciences and arts, and any separate extra parts and pieces pertaining thereto;

"The extra or separate parts of machinery and the apparatus that may come united or separately with the machinery are included in this provision, comprehending in this the bands of

leather or rubber that serve to communicate movement, but only when imported at the same time with the machinery to which they are adapted.

"Metals, precious, in bullion or in powder; money, legal of silver or gold, of the United States; moulds and patterns for the arts; naphtha; oats in grain or straw; oars for small vessels: plows and plowshares; paper, tarred for roofs; plants and seeds of any kind, not growing in the country, for cultivation; pens of any metal not silver or gold; petroleum, crude; petroleum or coal oil and its products for illuminating purposes; powder, common, for mines; quicksilver; rags or cloth for the manufacture of paper; roof tiles of clay or other material; sulphur; stoves of iron for cooking and other purposes; staves and headings for barrels; soda, hyposulphite of; steam engines; sewing machines; slates for roofs and pavements; sausages, large or small; teasels of wire, mounted on bands for machinery, or vegetable teasels; tools and instruments of steel, iron, brass, or wood, or composed of these materials, for artisans; types, coats of arms, spaces, rules, vignettes, and accessories for printing of all kinds; vegetables, fresh; wire, telegraph, the destination of which will be proven at the respective custom-houses by the parties interested; wire of iron or steel for carding, from No. 26 and upwards; wire, barbed, for fences, and the hooks and nails to fasten the same; water pipes of all classes, materials and dimensions; not considering as comprehended among them tubes of copper or other metal that do not come closed or soldered with seam or with riveting in all their length; window blinds, painted or not painted."[1] [See p. 204.]

[1] A treaty of Limits was concluded with Mexico, January 12, 1828, by which the boundary set forth in the 3d and 4th articles of the treaty of 1819, with Spain, were to be carried into effect. Articles were added, April 5, 1831, and January 12, 1835.

A treaty of Amity, Commerce, and Navigation was concluded, April 5, 1831, not differing essentially from that with Colombia, in 1824.

By a convention of April 11, 1839, claims against Mexico were to be referred to four commissioners, two being appointed by each State. In the event of a difference in the commission, the King of Prussia was to be asked to appoint an umpire. See agreement at the end of the treaty of 1848.

An Extradition treaty was entered into December 11, 1861 (see Extradition Treaties.)

NICARAGUA.

TREATY OF FRIENDSHIP COMMERCE AND NAVIGATION.

Concluded June 21, 1867. Ratifications exchanged at Granada, June 20, 1868. Proclaimed August 14, 1868.

ARTICLE XIV.—(Right of transit between the Atlantic and Pacific Oceans.)—"The Republic of Nicaragua hereby grants to the United States, and to their citizens and property, the right of transit between the Atlantic and Pacific Oceans through the territory of that republic, on any route of communication, natural or artificial, whether by land or by water, which may now or hereafter exist or be constructed under the authority of Nicaragua, to be used and enjoyed in the same manner and upon equal terms by both Republics and their respective citizens; the Republic of Nicaragua, however, reserving its rights of sovereignty over the same."

ARTICLE XV.—(Neutrality of the routes to be guaranteed—Free port—Conveyance of troops—Tolls.)—"The United States hereby agree to extend their protection to all such routes of communication as aforesaid, and to guarantee the neutrality and innocent use of the same. They also agree to employ their influence with other nations to induce them to guarantee such neutrality and protection.

"And the Republic of Nicaragua, on its part, undertakes to establish one free port at each extremity of one of the aforesaid routes of communication between the Atlantic and Pacific Oceans. At these ports no tonnage or other duties shall be imposed or levied by the Government of Nicaragua on the vessels of the United States, or on any effects or merchandise belonging to citizens or subjects of the United States, or upon the vessels or effects of any other country intended, *bona fide*,

July 1, 1868, Claims Convention, extended in 1871, 1872, 1874, 1876, July 10, 1868, Convention regulating Citizenship and Emigrants.

July 29, 1882, Convention for an International Boundary Survey West of the Rio Grande; and in 1884 touching the boundary line of the Red and Colorado Rivers.

for transit across the said routes of communication, and not for consumption within the Republic of Nicaragua. The United States shall also be at liberty, on giving notice to the Government or authorities of Nicaragua, to carry troops and munitions of war in their own vessels, or otherwise, to either of said free ports, and shall be entitled to their conveyance between them without obstruction by said Government or authorities, and without any charges or tolls whatever for their transportation on either of said routes; provided said troops and munitions of war are not intended to be employed against Central American nations friendly to Nicaragua. And no higher or other charges or tolls shall be imposed on the conveyance or transit of persons and property of citizens or subjects of the United States, or of any other country, across the said routes of communication, than are or may be imposed on the persons and property of citizens of Nicaragua.

"And the Republic of Nicaragua concedes the right of the Postmaster-General of the United States to enter into contracts with any individuals or companies to transport the mails of the United States along the said routes of communication, or along any other routes across the Isthmus, in its discretion, in closed bags, the contents of which may not be intended for distribution within the said Republic, free from the imposition of all taxes or duties by the Government of Nicaragua; but this liberty is not to be construed so as to permit such individuals or companies, by virtue of this right, to transport the mails, to carry also passengers or freight."

ARTICLE XVI.—(Protection of persons and property on transit routes.)—"The Republic of Nicaragua agrees that, should it become necessary at any time to employ military forces for the security and protection of persons and property passing over any of the routes aforesaid, it will employ the requisite force for that purpose; but upon failure to do this from any cause whatever, the Government of the United States may, with the consent, or at the request of the Government of Nicaragua, or of the Minister thereof at Washington, or of the competent legally appointed local authorities, civil or military, employ such force for this and for no other purpose; and when, in the opinion of the Government of Nicaragua, the necessity ceases, such force shall be immediately withdrawn.

"In the exceptional case, however, of unforeseen or imminent danger to the lives or property of citizens of the United States, the forces of said Republic are authorized to act for their protection without such consent having been previously obtained.

"But no duty or power imposed upon or conceded to the United States by the provisions of this article shall be performed or exercised except by authority and in pursuance of laws of Congress hereafter enacted. It being understood that such laws shall not affect the protection and guarantee of the neutrality of the routes of transit, nor the obligation to withdraw the troops which may be disembarked in Nicaragua directly that, in the judgment of the Government of this Republic, they should no longer be necessary, nor in any manner bring about new obligations on Nicaragua, nor alter her rights in virtue of the present treaty."

ARTICLE XVII.—(Protection by the United States may be withdrawn.)—"It is understood, however, that the United States, in according protection to such routes of communication, and guaranteeing their neutrality and security, always intend that the protection and guarantee are granted conditionally, and may be withdrawn if the United States should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this treaty, either by making unfair discriminations in favor of the commerce of any country or countries over the commerce of any other country or countries or by imposing oppressive exactions or unreasonable tolls upon mails, passengers, vessels, goods, wares, merchandise, or other articles. The aforesaid protection and guarantee shall not, however, be withdrawn by the United States without first giving six months' notice to the Republic of Nicaragua."

ARTICLE XVIII.—(Rights of citizens.)—"And it is further agreed and understood that in any grants or contracts which may hereafter be made or entered into by the Government of Nicaragua, having reference to the interoceanic routes above referred to, or either of them, the rights and privileges granted by this treaty to the Government and citizens of the United States shall be fully protected and reserved. And if any such grants or contracts now exist, of a valid character, it is further

understood that the guarantee and protection of the United States, stipulated in Article XV. of this treaty, shall be held inoperative and void until the holders of such grants and contracts shall recognize the concessions made in this treaty to the Government and citizens of the United States with respect to such interoceanic routes, or either of them, and shall agree to observe and be governed by these concessions as fully as if they had been embraced in their original grants or contracts; after which recognition and agreement said guarantee and protection shall be in full force; provided that nothing herein contained shall be construed either to affirm or to deny the validity of the said contracts."

ARTICLE XIX.—(Dividends.)—"After ten years from the completion of a railroad, or any other route of communication through the territory of Nicaragua, from the Atlantic to the Pacific Ocean, no company which may have constructed or be in possession of the same shall ever divide, directly or indirectly, by the issue of new stock, the payment of dividends or otherwise, more than fifteen per cent. per annum, or at that rate, to its stockholders from tolls collected thereupon; but whenever the tolls shall be found to yield a larger profit than this, they shall be reduced to the standard of fifteen per cent. per annum."

ARTICLE XX.—(Duration of Treaty.)—"The two high contracting parties, desiring to make this treaty as durable as possible, agree that this treaty shall remain in force for the term of fifteen years from the day of the exchange of the ratifications; and either party shall have the right to notify the other of its intention to terminate, alter, or reform this treaty, at least twelve months before the expiration of the fifteen years; if no such notice be given, then this treaty shall continue binding beyond the said time, and until twelve months shall have elapsed from the day on which one of the parties shall notify the other of its intention to alter, reform, or abrogate this treaty."[1]

[1] An Extradition Treaty was concluded with Nicaragua, June 25, 1887. (See Extradition Treaties.)

OTHER LATIN AMERICAN STATES.

ARGENTINE CONFEDERATION.—(1) Treaty for the free navigation of the rivers Parana and Uruguay, July 10, 1853. These rivers, in so far as they are controlled by the Argentine Confederation, are to be opened to the merchant vessels of all nations. (2) Treaty of Friendship, Commerce and Navigation, July 27, 1853.

BOLIVIA.—Treaty of Friendship, Commerce, and Navigation, May 13, 1858. (See also Peru—Bolivia.)

CENTRAL AMERICA.—Treaty of Commerce and Navigation, December 5, 1825.

CHILE.—(1) Treaty of Peace, Amity, and Commerce, May 16, 1832. (2) Convention explanatory of the treaty of 1832. Citizens of both nations shall enjoy perfect equality before the law. The 3d article declares that, "It being agreed by the 29th article of the aforesaid treaty that deserters from the public and private vessels of either party are to be restored thereto by the respective consuls; and whereas it is declared by the article 132 of the present constitution of Chili that 'there are no slaves in Chili,' and that 'slaves touching the territory of the Republic are free,' it is likewise naturally understood that the aforesaid stipulation shall not comprehend slaves serving under any denomination on board the public or private ships of the United States of America." (3) Convention concerning the submission to arbitration of the Macedonian Claims. To be referred to the King of Belgium.

COSTA RICA.—(1) Treaty of Amity, Commerce, and Navigation, July 10, 1851. (2) Claims, July 2, 1860.

DOMINICAN REPUBLIC.—Treaty of Amity, Commerce, Navigation and Extradition, February 8, 1867.

ECUADOR.—(1) Treaty of Peace, Friendship, Navigation, and Commerce, June 13, 1839.—The 34th article contains an agreement that "the words, 'most favored nation,' that occur in this treaty, shall not be so construed as to prevent either of the contracting parties from concluding any treaty or convention with any other nation or State it may think proper, as freely

and as fully as though said words were not used; *Provided, however*, that notwithstanding any such treaty or convention, the citizens of the United States shall be placed in Ecuador, with respect to navigation and commerce, upon an equal footing with the subjects of Spain and with the citizens of Mexico and of the other Hispano-American States, with which treaties have been or may be concluded, etc."

Violation of the treaty is not to authorize reprisals or war. (2) Claims Convention, November 25, 1862. (3) Convention relative to Naturalization (see Naturalization Treaties). (4) Extradition treaty, June 28, 1872 (see Extradition Treaties).

GUATEMALA.—Treaty of Amity, Commerce, and Navigation, March 3, 1849. Article XIV. declares the principle of "free ships, free goods," provided that this shall be understood to apply to those powers only who recognize this principle. Article XV.—" It is likewise agreed that in the case where the neutral flag of one of the contracting parties shall protect the property of the enemies of the other, by virtue of the above stipulation, it shall always be understood that the neutral property found in such enemy's vessels shall be held and considered as enemy's property, and as such shall be liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war, or even afterwards, if it were done without the knowledge of it; but the contracting parties agree that, two months having elapsed after the declaration, their citizens shall not plead ignorance thereof. On the contrary, if the flag of the neutral does not protect the enemy's property, in that case the goods and merchandises of the neutral embarked in such enemy's ship shall be free."

A list of goods to be considered free is given in the 16th article, which is the same as in the older treaties: and in the 17th article it is stipulated that all other goods shall be considered as free, except when going to places besieged or blockaded. And those places only are to be considered besieged or blockaded which are attacked by a belligerent force capable of preventing the entry of a neutral.

The 27th and 28th articles accord the privileges of the most favored nation to envoys and consuls.

HAYTI.—Treaty of Amity, Commerce, Navigation, and Extra-

dition, November 3, 1864. By the 19th article, free ships make free goods; and the property of neutrals on board of an enemy's vessel is not subject to confiscation, unless it be contraband of war.

HONDURAS.—Treaty of Friendship, Commerce, and Navigation, July, 1864.

PARAGUAY.—(1) Convention for the settlement of claims of the "United States and Paraguay Navigation Company." February 4, 1859, it was agreed to refer the question to commissioners. (2) Treaty of Friendship, Commerce, and Navigation, February 4, 1859.

PERU—BOLIVIA.—Treaty of Peace, Friendship, Commerce, and Navigation, November 30, 1836.

PERU.—(1) Conventions for the settlement of claims, 1841, 1862, 1863, 1868. (2) Treaty of Friendship, Commerce, and Navigation, 1851, and 1857. (3) Convention relative to the rights of neutrals at sea, July 22, 1856. This was for the purpose of establishing "a uniform system of maritime legislation in time of war, in accordance with the present state of civilization."

1st. Free ships make free goods, with the exception of contraband.

2d. The property of neutrals on board of an enemy's vessel is not subject to confiscation or detention; "it being also understood that, as far as regards the two contracting parties, warlike articles destined for the use of either of them shall not be considered as contraband of war."

And these principles are to be applied "to the commerce and navigation of all such Powers and States as shall consent to adopt them as permanent and immutable."

(4) Treaty of Friendship, Commerce, and Navigation, September 6, 1870. (5) Convention for Extradition. (See Extradition Treaties.) (6) Treaty of Friendship, Commerce, and Navigation, August 31, 1887. By the 20th article it is stipulated that articles of contraband "shall be subject to detention and confiscation, but the rest of the cargo and the ship shall be left free, etc." By the 22d article, privateers shall give security to answer for all injuries, before receiving their commissions.

SALVADOR.—(1) Treaty of Amity, Navigation, and Commerce, January 2, 1850. (2) Convention for Extradition. (See Extra-

dition Treaties.) (3) Treaty of Amity, Commerce, and Consular Privileges, December 6, 1870. In respect of property in time of war, same as treaty with Peru, July 22, 1856 (articles 15 and 16).

TEXAS. (1) Convention for settlement of claims, April 11, 1838. (2) Convention for marking the boundary, April 25, 1838.

VENEZUELA.—(1) Treaty of Peace, Friendship, Navigation, and Commerce, January 20, 1836. (2) Convention for the settlement of the Aves Island Claims, January 14, 1859. The government of Venezuela to pay to the government of the United States, $130,000. (3) Treaty of Amity, Commerce, Navigation, and Extradition, August 27, 1860. (4) Claims Convention, 1866.

BRAZIL.—(1) Treaty of Friendship, Commerce, and Navigation, December 12, 1828. (2) Claims, Convention, 1849. (3) Agreement concerning Trade-marks, September 24, 1878.[1]

[1] *Note to Reciprocity Treaty with Mexico, of* 1883.—This Treaty was to go into effect only when the necessary legislation was passed. Congress has failed to enact such legislation; and the treaty remains suspended.

V.

CONSULAR CONVENTIONS.

FRANCE, 1853.

Convention Concerning the Rights and Privileges of Consuls.

Concluded February 23, 1853. Ratifications exchanged at Washington, August 11, 1853. Proclaimed August 12, 1853.

"The President of the United States of America, and His Majesty the Emperor of the French, being equally desirous to strengthen the bonds of friendship between the two nations, and to give a new and more ample development to their commercial intercourse, deem it expedient, for the accomplishment of that purpose, to conclude a special convention which shall determine, in a precise and reciprocal manner, the rights, privileges and duties of the Consuls of the two countries. Accordingly they have named:

"The President of the United States, the Honorable Edward Everett, Secretary of State of the United States; His Majesty the Emperor of the French, the Count de Sartiges, Commander of the Imperial Order of the Legion of Honor, &c., &c., his Envoy Extraordinary and Minister Plenipotentiary at Washington;

"Who, after communicating to each other their full powers, found in good and due form, have agreed upon the following articles:"

Article I.—"(Exequaturs.)—The Consuls-General, Consuls and Vice-Consuls or Consular Agents of the United States and France shall be reciprocally received and recognized, on the presentation of their commissions, in the form established in their respective countries. The necessary exequatur for the

exercise of their functions shall be furnished to them without charge; and on the exhibition of this exequatur, they shall be admitted at once, and without difficulty, by the territorial authorities, federal or State, judicial or executive, of the ports, cities and places of their residence and district, to the enjoyment of the prerogatives reciprocally granted. The Government that furnishes the exequatur reserves the right to withdraw it on a statement of the reasons for which it has thought proper to do so."

ARTICLE II.—(Privileges and immunities.)—"The Consuls-General, Consuls, Vice-Consuls or Consular Agents of the United States and France, shall enjoy in the two countries the privileges usually accorded to their offices, such as personal immunity, except in the case of crime, exemption from military billetings, from service in the militia or in the national guard, and other duties of the same nature; and from all direct and personal taxation, whether federal, State or municipal. If, however, the said Consuls-General, Consuls, Vice-Consuls or Consular Agents, are citizens of the country in which they reside; if they are, or become, owners of property there, or engage in commerce, they shall be subject to the same taxes and imposts, and with the reservation of the treatment granted to Commercial Agents, to the same jurisdiction as other citizens of the country who are owners of property, or merchants.

"They may place on the outer door of their offices, or of their dwelling-houses, the arms of their nation, with an inscription in these words: 'Consul of the United States,' or 'Consul of France;' and they shall be allowed to hoist the flag of their country thereon.

"They shall never be compelled to appear as witnesses before the courts. When any declaration for judicial purposes, or deposition, is to be received from them in the administration of justice, they shall be invited, in writing, to appear in court, and if unable to do so, their testimony shall be requested in writing, or be taken orally at their dwellings.

"Consular pupils shall enjoy the same personal privileges and immunities as Consuls-General, Consuls, Vice-Consuls or Consular Agents.

"In case of death, indisposition or absence of the latter, the Chancellors, Secretaries, and Consular pupils attached to their

offices, shall be entitled to discharge *ad interim* the duties of their respective posts; and shall enjoy whilst thus acting the prerogatives granted to the incumbents."

ARTICLE III.—(Consular dwelling and archives.)—"The consular offices and dwellings shall be inviolable. The local authorities shall not invade them under any pretext. In no case shall they examine or seize the papers there deposited. In no case shall those offices or dwellings be used as places of asylum."

ARTICLE IV.—(Application to governmental authorities.)—"The Consuls-General, Consuls, Vice-Consuls or Consular Agents, of both countries, shall have the right to complain to the authorities of the respective Governments whether federal or local, judicial or executive, throughout the extent of their consular district, of any infraction of the treaties or conventions existing between the United States and France, or for the purpose of protecting informally the rights and interests of their countrymen, especially in cases of absence. Should there be no diplomatic agent of their nation, they shall be authorized, in case of need, to have recourse to the General or Federal Government of the country in which they exercise their functions."

ARTICLE V.—(Power of Consul to appoint Vice-Consuls and Agents.)—"The respective Consuls-General, and Consuls, shall be free to establish, in such parts of their districts as they may see fit, Vice-Consuls, or Consular Agents, who may be taken indiscriminately from among Americans of the United States, Frenchmen, or citizens of other countries. These Agents, whose nomination, it is understood, shall be submitted to the approval of the respective Governments, shall be provided with a certificate given to them by the Consul by whom they are named, and under whose orders they are to act."

ARTICLE VI.—(Verification and custody of certain papers.)—"The Consuls-General, Consuls, Vice-Consuls, or Consular Agents, shall have the right of taking at their offices or bureaux, at the domicile of the parties concerned, or on board ship, the declarations of captains, crews, passengers, merchants or citizens of their country, and of executing there all requisite papers.

"The respective Consuls-General, Consuls, Vice-Consuls or

Consular Agents, shall have the right, also, to receive at their offices, or bureaux, conformably to the laws and regulations of their country, all acts of agreement executed between the citizens of their own country and citizens or inhabitants of the country in which they reside, and even all such acts between the latter, provided that these acts relate to property situated, or to business to be transacted, in the territory of the nation to which the Consul or the Agent before whom they are executed may belong.

"Copies of such papers, duly authenticated by the Consuls-General, Consuls, Vice-Consuls, or Consular Agents, and sealed with the official seal of their consulate or consular agency, shall be admitted in courts of justice throughout the United States and France, in like manner as the original."

ARTICLE VII.—(Right to hold property.)—"In all the States of the Union, whose existing laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as the citizens of the United States. They shall be free to dispose of it as they may please, either gratuitously or for value received, by donation, testament or otherwise, just as those citizens themselves; and in no case shall they be subjected to taxes on transfer, inheritance or any others different from those paid by the latter, or to taxes which shall not be equally imposed.

"As to the States of the Union, by whose existing laws aliens are not permitted to hold real estate, the President engages to recommend to them the passage of such laws as may be necessary for the purpose of conferring this right.

"In like manner, but with the reservation of the ulterior right of establishing reciprocity in regard to possession and inheritance, the Government of France accords to the citizens of the United States the same rights within its territory in respect to real and personal property, and to inheritance, as are enjoyed there by its own citizens."

ARTICLE VIII.—(Settlement of disputes between masters and crews.)—"The respective Consuls-General, Consuls, Vice-Consuls or Consular Agents, shall have exclusive charge of the internal order of the merchant-vessels of their nation, and shall alone take cognizance of differences which may arise, either at

sea or in port, between the captain, officers and crew, without exception, particularly in reference to the adjustment of wages and the execution of contracts. The local authorities shall not, on any pretext, interfere in these differences, but shall lend forcible aid to the Consuls, when they may ask it, to arrest and imprison all persons composing the crew whom they may deem it necessary to confine. Those persons shall be arrested at the sole request of the Consuls, addressed in writing to the local authority, and supported by an official extract from the register of the ship or the list of the crew, and shall be held, during the whole time of their stay in the port, at the disposal of the Consuls. Their release shall be granted at the mere request of the Consuls made in writing. The expenses of the arrest and detention of those persons shall be paid by the Consuls."

ARTICLE IX.—(Deserters.)—"The respective Consuls-General, Consuls, Vice-Consuls or Commercial Agents, may arrest the officers, sailors and all other persons making part of the crews of ships of war, or merchant-vessels of their nation, who may be guilty or be accused of having deserted said ships and vessels, for the purpose of sending them on board, or back to their country. To that end the Consuls of France in the United States shall apply to the magistrates designated in the act of Congress of May 4, 1826—that is to say, indiscriminately to any of the federal, state or municipal authorities; and the Consuls of the United States in France shall apply to any of the competent authorities and make a request in writing for the deserters, supporting it by an exhibition of the registers of the vessel and list of the crew, or by other official documents, to show that the men whom they claim belonged to said crew. Upon such request alone, thus supported, and without the exaction of any oath from the Consuls, the deserters, not being citizens of the country where the demand is made, either at the time of their shipping or of their arrival in the port, shall be given up to them. All aid and protection shall be furnished them for the pursuit, seizure and arrest of the deserters, who shall even be put and kept in the prisons of the country at the request and at the expense of the Consuls, until these agents may find an opportunity of sending them away. If, however, such opportunity should not present itself within the space of three months,

counting from the day of the arrest, the deserters shall be set at liberty, and shall not again be arrested for the same cause."

ARTICLE X.—(Power of Consuls relative to the vessels of their country.)—"The respective Consuls-General, Consuls, Vice-Consuls or Consular Agents, shall receive the declarations, protests and reports of all captains of vessels of their nation in reference to injuries experienced at sea; they shall examine and take note of the stowage; and when there are no stipulations to the contrary between the owners, freighters or insurers, they shall be charged with the repairs. If any of the inhabitants of the country in which the Consuls reside, or citizens of a third nation, are interested in the matter, and the parties cannot agree, the competent local authority shall decide."

ARTICLE XI.—(Salvage.)—"All proceedings relative to the salvage of American vessels wrecked upon the coasts of France, and of French vessels wrecked upon the coasts of the United States, shall be respectively directed by the Consuls-General, Consuls and Vice-Consuls of the United States in France, and by the Consuls-General, Consuls and Vice-Consuls of France in the United States, and until their arrival, by the respective Consular Agents, wherever an agency exists. In the places and ports where an agency does not exist, the local authorities, until the arrival of the Consul in whose district the wreck may have occurred, and who shall be immediately informed of the occurrence, shall take all necessary measures for the protection of person and the preservation of property.

"The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if they do not belong to the crews that have been wrecked, and to carry into effect the arrangements made for the entry and exportation of the merchandise saved.

"It is understood that such merchandise shall not be subjected to any custom-house duty if it is to be re-exported; and if it be entered for consumption, a diminution of such duty shall be allowed in conformity with the regulations of the respective countries."

ARTICLE XII.—(Most favored nation.)—"The respective Consuls-General, Consuls, Vice-Consuls or Consular Agents, as well as their consular pupils, chancellors, and secretaries, shall enjoy in the two countries all the other privileges, exemptions and

immunities which may at any future time be granted to the agents of the same rank of the most favored nation."

ARTICLE XIII.—(Duration of convention.)—"The present convention shall remain in force for the space of ten years from the day of the exchange of the ratifications, which shall be made in conformity with the respective constitutions of the two countries, and exchanged at Washington within the period of six months, or sooner if possible. In case neither party gives notice twelve months before the expiration of the said period of ten years of its intention not to renew this convention, it shall remain in force a year longer, and so on from year to year, until the expiration of a year from the day on which one of the parties shall give such notice.

"In testimony whereof the respective Plenipotentiaries have signed this convention, and hereunto affixed their respective seals.

"Done at the city of Washington the twenty-third day of February, Anno Domini, one thousand eight hundred and fifty-three.

"EDWARD EVERETT.
"SARTIGES."

BELGIUM, 1880.

CONVENTION CONCERNING THE RIGHTS, IMMUNITIES AND PRIVILEGES OF CONSULAR OFFICERS.

Concluded March 9, 1880. Ratifications exchanged at Washington, February 25, 1881. Proclaimed March 1, 1881.

"The President of the United States of America and His Majesty the King of the Belgians, being mutually desirous of defining the rights, privileges and immunities of consular officers in the two countries, deem it expedient to conclude a consular convention for that purpose, and have accordingly named as their Plenipotentiaries:

"The President of the United States, William Maxwell Evarts, Secretary of State; and His Majesty the King of the Belgians, Maurice Delfosse, Commander of the Order of Leopold, &c., &c., his Envoy Extraordinary and Minister Plenipotentiary in the United States; who after having communicated

to each other their respective full powers, found to be in good and proper form, have agreed upon the following articles:"

ARTICLE I.—(Liberty to appoint Consuls.)—"Each of the high contracting parties agrees to receive from the other, Consuls-General, Consuls, Vice-Consuls, and Consular Agents, in all its ports, cities and places, except those where it may not be convenient to recognize such officers. This reservation, however, shall not apply to one of the high contracting parties without also applying to every other power."

ARTICLE II.—(Most favored nation privileges accorded to Consuls—Exequaturs.)—"The Consuls-General, Consuls, Vice-Consuls, and Consular Agents of each of the two high contracting parties shall enjoy reciprocally, in the States of the other, all the privileges, exemptions and immunities that are enjoyed by officers of the same rank and quality of the most favored nation. The said officers, before being admitted to the exercise of their functions, and the enjoyment of the immunities thereto pertaining, shall present their commissions in the forms established in their respective countries. The government of each of the two high contracting powers shall furnish them the necessary exequatur free of charge, and, on the exhibition of this instrument, they shall be permitted to enjoy the rights, privileges and immunities granted by this convention."

ARTICLE III.—(Rights of Consuls, citizens of the States appointing them.)—"Consuls-General, Consuls, Vice-Consuls, and Consular Agents, citizens of the State by which they are appointed, shall be exempt from preliminary arrest except in the case of offences which the local legislation qualifies as crimes and punishes as such; they shall be exempt from military billetings, from service in the regular army or navy, in the militia, or in the national guard; they shall likewise be exempt from all direct taxes, national, State or municipal, imposed upon persons, either in the nature of capitation tax or in respect to their property, unless such taxes become due on account of the possession of real estate, or for interest on capital invested in the country where the said officers exercise their functions. This exemption shall not, however, apply to Consuls-General, Consuls, Vice-Consuls, or Consular Agents engaged in any profession, business or trade, but the said officers shall in such case be subject to the payment of the same taxes

that would be paid by any other foreigner under the like circumstances."

ARTICLE IV.—(Evidence of Consuls in courts of justice.)—"When a court of one of the two countries shall desire to receive the judicial declaration or deposition of a Consul-General, Consul, Vice-Consul or Consular Agent, who is a citizen of the State which appointed him, and who is engaged in no commercial business, it shall request him, in writing, to appear before it, and in case of his inability to do so, it shall request him to give his testimony in writing, or shall visit his residence or office to obtain it orally.

"It shall be the duty of such officer to comply with this request with as little delay as possible.

"In all criminal cases, contemplated by the sixth article of the amendments to the Constitution of the United States, whereby the right is secured to persons charged with crimes to obtain witnesses in their favor, the appearance in court of said consular officer shall be demanded, with all possible regard to the consular dignity and to the duties of his office. A similar treatment shall also be extended to the consuls of the United States in Belgium, in the like cases."

ARTICLE V.—(Arms and flags.)—"Consuls-General, Consuls, Vice-Consuls, and Consular Agents may place over the outer door of their offices the arms of their nation, with this inscription: *Consulate-General*, or *Consulate*, or *Vice-Consulate*, or *Consular-Agency of the United States* or *of Belgium*.

"They may also raise the flag of their country on their offices, except in the capital of the country when there is a legation there. They may, in like manner, raise the flag of their country over the boat employed by them in the port for the exercise of their functions."

ARTICLE VI.—(Consular offices inviolable—Not to be used as asylums—Consular archives.)—"The Consular offices shall at all times be inviolable. The local authorities shall not, under any pretext, invade them. In no case shall they examine or seize the papers there deposited. In no case shall those offices be used as places of asylum. When a consular officer is engaged in other business, the papers relating to the consulate shall be kept separate."

ARTICLE VII.—(Rights of Acting Consuls.)—"In the event of

the death, incapacity or absence of Consuls-General, Consuls, Vice-Consuls and Consular Agents, their chancellors or secretaries, whose official character may have previously been made known to the Department of State at Washington, or to the Ministry for Foreign Affairs in Belgium, may temporarily exexcise their functions, and while thus acting they shall enjoy all the rights, prerogatives and immunities granted to the incumbents."

ARTICLE VIII.—(Power of Consuls to appoint Vice-Consuls.)—"Consuls-General and Consuls may, so far as the laws of their country allow, with the approbation of their respective governments, appoint Vice-Consuls and Consular Agents in the cities, ports and places within their consular jurisdiction. These agents may be selected from among citizens of the United States or of Belgium, or those of other countries. They shall be furnished with a regular commission, and shall enjoy the privileges stipulated for consular officers in this convention, subject to the exceptions specified in Articles III. and IV."

ARTICLE IX.—(Application by Consuls to governmental authorities.)—See Article IV. of the Convention of 1853 with France.

ARTICLE X.—(Verification and custody of certain papers.)—"Consuls-General, Consuls, Vice-Consuls and Consular Agents may take at their offices, at their private residences, at the residence of the parties, or on board ship, the depositions of the captains and crews of vessels of their own country, of passengers on board of them, and of any other citizen of their nation. They may also receive at their offices, conformably to the laws and regulations of their country, all contracts between the citizens of their country and the citizens or inhabitants of the country where they reside, and even all contracts between the latter, provided they relate to property situated or to business to be transacted in the territory of the nation to which the said consular officer may belong.

"Such papers and official documents of every kind, whether in the original, in copies, or in translation, duly authenticated and legalized by the Consuls-General, Consuls, Vice-Consuls and Consular Agent, and sealed with their official seal, shall be received as legal documents in courts of justice throughout the United States and Belgium."

ARTICLE XI.—(Power of Consuls relative to the vessels of their country and their masters and crews.)—"The respective Consuls-General, Consuls, Vice-Consuls and Consular Agents shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall alone take cognizance of all differences which may arise, either at sea or in port, between the captains, officers and crews, without exception, particularly in reference to the adjustment of wages and the execution of contracts. The local authorities shall not interfere except when the disorder that has arisen is of such a nature as to disturb tranquillity and public order on shore, or in the port, or when a person of the country or not belonging to the crew shall be concerned therein.

"In all other cases, the aforesaid authorities shall confine themselves to lending aid to the Consuls and Vice-Consuls or Consular Agents, if they are requested by them to do so, in causing the arrest and imprisonment of any person whose name is inscribed on the crew-list, whenever, for any cause, the said officers shall think proper."

ARTICLE XII.—(Deserters.)—"The respective Consuls-General, Consuls, Vice-Consuls and Consular Agents may cause to be arrested the officers, sailors, and all other persons making part of the crews, in any manner whatever, of ships of war or merchant vessels of their nation, who may be guilty, or be accused, of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To this end they shall address the competent local authorities of the respective countries, in writing, and shall make to them a written request for the deserters, supporting it by the exhibition of the register of the vessel and list of the crew, or by other official documents, to show that the persons claimed belonged to the said ship's company.

"Upon such request alone thus supported, the delivery to them of the deserters cannot be refused, unless it should be duly proved that they were citizens of the country where their extradition is demanded at the time of their being inscribed on the crew-list. All the necessary aid and protection shall be furnished for the pursuit, seizure and arrest of the deserters, who shall even be put and kept in the prisons of the country, at the request and expense of the consular officers until there

may be an opportunity for sending them away. If, however, such an opportunity should not present itself within the space of three months, counting from the day of the arrest, the deserters shall be set at liberty, nor shall they be again arrested for the same cause.

"If the deserter has committed any misdemeanor, and the court having the right to take cognizance of the offence shall claim and exercise it, the delivery of the deserter shall be deferred until the decision of the court has been pronounced and executed."

ARTICLE XIII.—(Settlement of damages suffered at sea by vessels of either nation.)—"In the absence of an agreement to the contrary between the owners, freighters and insurers, all damages suffered at sea by the vessels of the two countries, whether they enter port voluntarily, or are forced by stress of weather, shall be settled by the Consuls-General, Consuls, Vice-Consuls and Consular Agents of the respective countries. If, however, any inhabitant of the country or citizen or subject of a third power, shall be interested in the matter, and the parties cannot agree, the competent local authorities shall decide."

ARTICLE XIV.—(Shipwrecks—Salvage.)—Same as Article XI of the Convention with France, with the addition of the following clause:

"The intervention of the local authorities in these different cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation."

ARTICLE XV.—(Death of citizens of one nation in territory of the other.)—"In case of the death of any citizen of the United States in Belgium, or of a citizen of Belgium in the United States, without having any known heirs or testamentary executor by him appointed, the competent local authorities shall give information of the circumstances to the Consuls or Consular Agents of the nation to which the deceased belongs, in order that the necessary information may be immediately forwarded to parties interested.

"Consuls-General, Consuls, Vice-Consuls and Consular Agents shall have the right to appear, personally or by dele-

gate, in all proceedings on behalf of the absent or minor heirs, or creditors, until they are duly represented."

ARTICLE XVI.—(Duration of Convention.)—Same as Article XIII. of the Convention with France, 1853.

WILLIAM MAXWELL EVARTS.
MAURICE DELFOSSE.[1]

[1] The first separate consular treaty concluded by the United States was that with France, in 1788. (See Treaties with France.) The extensive consular powers claimed by France under that treaty formed one of the causes of the subsequent controversy with that country; and, together with the treaties of Commerce and Alliance of 1778, it was abrogated by Act of Congress, in 1798. No other separate consular convention was negotiated by the United States until 1850; but most, if not all of the treaties of Amity and Commerce contain an article providing for the appointment of consuls, and generally stipulating for the privileges of the most favored nation.

In the period since 1850, it will be seen that there are some differences in the two conventions given above in full, that with France in 1853, and that with Belgium in 1880. Other separate consular conventions are as follows:—

NEW GRANADA, May 4, 1850.—This treaty is, in the main, similar to that with France. In Article V., "The contracting Republics recognize no diplomatic character in consuls, for which reason they will not enjoy, in either country, the immunities granted to public agents accredited in that character.

"Whenever the presence of consuls may be required in courts or offices of justice, they shall be summoned in writing."

HANSEATIC REPUBLICS, April 30, 1852.—This is a convention of only three articles negotiated by Daniel Webster.

NETHERLANDS, January 22, 1855, with reference to the rights of American consuls in Dutch colonies.

May 23, 1878, a general Consular Convention was concluded with Netherlands, the 4th article of which is as follows:—

"If the testimony of a consular officer, who is a citizen or subject of the State by which he is appointed, and who is not engaged in business, is needed before the courts of either country, he shall be invited in writing to appear in court, and, if unable to do so, his testimony shall be requested in writing, or be taken orally at his dwelling or office.

"To obtain the testimony of such consular officer before the courts of the country where he may exercise his functions, the interested party in civil cases, or the accused in criminal cases, shall apply to the competent judge, who shall invite the consular officer in the manner prescribed in § 1., to give his testimony.

"It shall be the duty of said consular officer to comply with this request, without any delay which can be avoided.

"Nothing in the foregoing part of this article, however, shall be construed to conflict with the provisions of the sixth article of the amendments to the Constitution of the United States, or with like provisions in the Constitution of the several States, whereby the right is secured to persons charged with crimes, to obtain witnesses in their favor, and to be confronted with the witnesses against them."

ITALY, February 8, 1868, superseded by the convention of May 8, 1878. The 4th article in each of these treaties is similar to the 4th article of the convention with the Netherlands of 1878 given above with reference to the testimony of consuls before the courts. And these later conventions are essentially the same as that with Belgium, given above in full.

AUSTRIA-HUNGARY, July 11, 1870.

GERMAN EMPIRE, December 11, 1871.—This is the only treaty that the United States have concluded with this new State.

ROUMANIA, June 17, 1881.

SERVIA, October, 1881.

ZANZIBAR, July 3, 1886.

Rights and Privileges of Consuls.—By the 8th article of the Consular Convention with France (1853), consuls are given the "exclusive charge of the internal order of the merchant vessels of their nation, * * * and the local authorities shall not, on any pretext, interfere in these differences." This is giving a larger power to consuls than is generally granted by treaty. In most consular conventions, and in articles of general treaties with reference to consuls, an exception is made in the case of disorders on board merchant-vessels in foreign ports which disturb the public peace on shore or in port." To this effect is the 8th article of the general treaty with Russia (1832), the conventions with the German Empire (1871), with the Netherlands (1878), with Belgium (1880), and in other treaties. In the absence of treaty stipulations, consuls have not these powers. (See Snow's Cases and Opinions on International Law, pp. 121–138.)

The provision in the treaty with France (1853), exempting consuls from appearing as witnesses before courts of justice led to a controversy with that country, in the case of the French Consul Dillon. (Wharton's Digest, I. 665; Snow's Cases, p. 99.) The exemption granted by the treaty is in conflict with the 6th amendment of the constitution, which gives the accused, in criminal cases, the right of compulsory process to procure witnesses in his favor, and to be confronted by the witnesses against him. It will be seen that subsequent consular conventions make an exception in the case of criminal trials.

Consuls in Semi-civilized States.—In treaties with most Asiatic and African countries, United States Consuls are granted exclusive jurisdiction over disputes between citizens of the United States, and, in some cases, over offenses committed by citizens of the United States. These countries are: Borneo, China, Japan, Morocco, Madagascar, Muscat, Persia, Samoa, Tripoli, Tunis, and Turkey. (Wharton's Digest, I., § 125.)

VI.

CONVENTIONS FOR THE EXTRADITION OF CRIMINALS.

FRANCE, 1843.

Concluded November 9, 1843. Ratifications exchanged at Washington, April 12, 1844. Proclaimed April 13, 1844.

ARTICLE I.—"It is agreed that the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in the next following article, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and commitment for trial, if the crime had been there committed."

ARTICLE II.—"Persons shall be so delivered up who shall be charged, according to the provisions of this convention, with any of the following crimes, to wit: Murder (comprehending the crimes designated in the French penal code by the terms, assassination, parricide, infanticide and poisoning), or with an attempt to commit murder, or with rape, or with forgery, or with arson, or with embezzlement by public officers, when the same is punishable with infamous punishment."

ARTICLE III.—"On the part of the French Government, the surrender shall be made only by authority of the Keeper of the Seals, Minister of Justice; and on the part of the Government of the United States, the surrender shall be made only by authority of the Executive thereof."

ARTICLE IV.—"The expenses of any detention and delivery effected in virtue of the preceding provisions shall be borne and defrayed by the government in whose name the requisition shall have been made."

ARTICLE V.—"The provisions of the present convention shall not be applied in any manner to the crimes enumerated in the second article, committed anterior to the date thereof, nor to any crime or offence of a purely political character."

ARTICLE VI.—"The treaty shall be in force until abrogated by the contracting parties, or one of them, on giving six months notice.

"Signed by,

"A. P. UPSHUR.

"A. PAGEOT."[1]

PRUSSIA, 1852.

PRUSSIA AND OTHER STATES OF THE GERMAN CONFEDERATION, 1852.

Concluded June 16, 1852. Ratifications exchanged at Washington, May 30; 1853. Proclaimed June 1, 1853.

"Whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the parties respectively, that persons committing certain heinous crimes, being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, and also to enumerate such crimes explicitly; and whereas the laws and constitution of Prussia, and of the other German

[1] By a convention of February 24, 1845, the crimes of robbery and burglary were added to the list of extraditable offenses; and by the convention of February 10, 1858, the following offenses were included: Forging or knowingly passing or putting in circulation counterfeit coin or bank notes or other paper current as money, with intent to de fraud any person or persons: embezzlement by any person or persons, hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

States, parties to this convention, forbid them to surrender their own citizens to a foreign jurisdiction, the Government of the United States, with a view of making the convention strictly reciprocal, shall be held equally free from any obligation to surrender citizens of the United States; therefore on the one part, the United States of America, and, on the other part, His Majesty the King of Prussia, in his own name, as well as in the name of His Majesty the King of Saxony, His Royal Highness the Elector of Hesse, His Royal Highness the Grand Duke of Hesse and on Rhine, His Royal Highness the Grand Duke of Saxe-Weimar-Eisenach, His Highness the Duke of Saxe-Meinigen, His Highness the Duke of Saxe-Altenburg, His Highness the Duke of Saxe-Coburg-Gotha, His Highness the Duke of Brunswick, His Highness the Duke of Anhalt-Dessau, His Highness the Duke of Anhalt-Bernburg, His Highness the Duke of Nassau, His Serene Highness the Prince Schwarzburg-Rudolstadt, His Serene Highness the Prince of Schwarzburg-Sondershausen, Her Serene Highness the Princess and Regent of Waldeck, His Serene Highness the Prince of Reuss, elder branch, His Serene Highness the Prince of Reuss, junior branch, His Serene Highness the Prince of Lippe, His Serene Highness the Landgrave of Hesse-Homburg, as well as the free city of Francfort, having resolved to treat on this subject, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a convention, that is to say:

"The President of the United States of America, Daniel Webster, Secretary of State, and His Majesty the King of Prussia in his own name, as well as in the name of the other German Sovereigns above enumerated, and the free city of Francfort, Frederic Charles Joseph von Gerolt, his said Majesty's Minister Resident near the Government of the United States:

"Who, after reciprocal communication of their respective powers, have agreed to and signed the following articles:"

ARTICLE I.—(Crimes—Proceedings before surrender.)—"It is agreed that the United States and Prussia, and the other States of the Germanic Confederation included in or which may hereafter accede to this convention, shall upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being

charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other; *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive, or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive."

ARTICLE II.—(Other States may accede hereto.)—"The stipulations of this convention shall be applied to any other State of the Germanic Confederation which may hereafter declare its accession thereto."

ARTICLE III.—(Neither nation to deliver its citizens.)—"None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention."

ARTICLE IV.—(Offences in country of asylum.)—"Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the State where he has sought an asylum, or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof."

ARTICLE V.—(Duration of treaty.)—"The present convention

shall continue in force until the 1st of January, 1858, and if neither party shall have given to the other six months' notice of its intention, then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other, at any time after the expiration of the said first day of January, 1858."

ARTICLE VI.—(Ratifications.)—"The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by the Government of Prussia, and the ratifications shall be exchanged at Washington within six months from the date hereof, or sooner if possible.

"In faith whereof we, the respective Plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

"Done in triplicate at Washington, the sixteenth day of June, one thousand eight hundred and fifty-two, and the seventy-sixth year of the Independence of the United States.

[Seal.] "DAN'L WEBSTER.
[Seal.] "FR. V. GEROLT."

BELGIUM, 1882.

EXTRADITION.

Concluded June 13, 1882. Ratifications exchanged at Washington, November 18, 1882. Proclaimed November 20, 1882.

ARTICLE I.—"The Government of the United States and the Government of Belgium, mutually agree to deliver up persons who, having been charged, as principals or accessories, with or convicted of any of the crimes and offences specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum, or be found within the territories of the other: Provided that this shall only be done upon such evidence of criminality as, according to the

laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed."

ARTICLE II.—(Crimes.)—"Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of this convention, with any of the following crimes:

"1. Murder, comprehending the crimes designated in the Belgian penal code by the terms of parricide, assassination, poisoning and infanticide.

"2. The attempt to commit murder.

"3. Rape, or attempt to commit rape. Bigamy. Abortion.

"4. Arson.

"5. Piracy or mutiny on shipboard whenever the crew, or part thereof, shall have taken possession of the vessel by fraud or by violence against the commander.

"6. The crime of burglary, defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another, money or goods by violence or putting him in fear; and the corresponding crimes punished by the Belgian laws under the description of thefts committed in an inhabited house by night, and by breaking in by climbing or forcibly, and thefts committed with violence or by means of threats.

"7. The crime of forgery, by which is understood the utterance of forged papers, and also the counterfeiting of public, sovereign or governmental acts.

"8. The fabrication or circulation of counterfeit money, either coin or paper, or of counterfeit public bonds, coupons of the public debt, bank-notes, obligations, or in general, anything being a title or instrument of credit; the counterfeiting of seals and dies, impressions, stamps and marks of state and public administrations, and the utterance thereof.

"9. The embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositaries.

"10. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.

"11. Wilful and unlawful destruction or obstruction of railroads which endanger human life.

"12. Reception of articles obtained by means of one of the crimes or offences provided for by the present convention.

"Extradition may also be granted for the attempt to commit any of the crimes above enumerated when such attempt is punishable by the laws of both contracting parties."

ARTICLE III.—(Persons not to be tried or punished for offences not provided for by convention—Extradition to third country.)—"A person surrendered under this convention, shall not be tried or punished in the country to which his extradition has been granted, nor given up, to a third power for a crime or offence, not provided for by the present convention and committed previously to his extradition, until he shall have been allowed one month to leave the country after having been discharged; and, if he shall have been tried and condemned to punishment, he shall be allowed one month after having suffered his penalty or having been pardoned.

"He shall moreover not be tried or punished for any crime or offence provided for by this convention committed previous to his extradition, other than that which gave rise to the extradition, without the consent of the Government which surrendered him, which may, if it think proper, require the production of one of the documents mentioned in Article VII of this convention.

"The consent of that Government shall likewise be required for the extradition of the accused to a third country; nevertheless such consent shall not be necessary when the accused shall have asked of his own accord to be tried or to undergo his punishment, or when he shall not have left within the space of time above specified the territory of the country to which he has been surrendered."

ARTICLE IV.—(Persons cannot be extradited for political offences—Exceptions.)—"The provisions of this convention shall not be applicable to persons guilty of any political crime or offence or of one connected with such a crime or offence. A person who has been surrendered on account of one of the common crimes or offences mentioned in Article II., shall consequently in no case be prosecuted and punished in the state to which his extradition has been granted on account of a po-

litical crime or offence committed by him previously to his extradition or on account of an act connected with such a political crime or offence, unless he has been at liberty to leave the country for one month after having been tried and, in case of condemnation, for one month after having suffered his punishment or having been pardoned.

"An attempt against the life of the head of a foreign government, or against that of any member of his family when such attempt comprises the act either of murder or assassination, or of poisoning, shall not be considered a political offence or an act connected with such an offence."

ARTICLE V.—(Neither nation to deliver its citizens.)—"Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention."

ARTICLE VI.—(Offences in country of asylum.)—"If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for the commission of offences in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced."

ARTICLE VII.—(Requisitions for extradition: mode of procedure.)—"Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers.

"If the person whose extradition may be asked for shall have been convicted of a crime or offence, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Belgium, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where such warrant may have been issued, must accompany the requisition as aforesaid.

"The President of the United States, or the proper executive

authority in Belgium, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases."

ARTICLE VIII.—(Expenses.)—"The expenses of the arrest, detention and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made."

ARTICLE IX.—(Exemption from extradition under statutes of limitation.)—"Extradition shall not be granted, in pursuance of the provisions of this convention, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed, has become barred by limitation, according to the laws of the country to which the requisition is addressed."

ARTICLE X.—(Articles seized with accused.)—"All articles found in the possession of the accused party and obtained through the commission of the act with which he is charged, or that may be used as evidence of the crime for which his extradition is demanded, shall be seized if the competent authority shall so order, and shall be surrendered with his person.

"The rights of third parties to the articles so found shall nevertheless be respected."

ARTICLE XI.(—Duration of convention.)—"The present convention shall take effect thirty days after the exchange of ratifications.

"After it shall have taken effect, the convention of March 19, 1874, shall cease to be in force and shall be superseded by the present convention which shall continue to have binding force for six months after a desire for its termination shall have been expressed in due form by one of the two governments to the other.

"It shall be ratified and its ratifications shall be exchanged at Washington as soon as possible.

"In witness whereof, the respective Plenipotentiaries have signed the above articles, both in the English and French languages, and they have thereunto affixed their seals.

" Done in duplicate, at the city of Washington, this thirteenth day of June, 1882.[1]

(Seal.) " FREDK. T. FRELINGHUYSEN,
(Seal.) " THRE. DE BOUNDER DE MELSBRŒCK."

[1] The first attempt of the United States to regulate extradition by treaty stipulation is the 27th article of the Jay treaty, of 1794. It included the crimes of murder and forgery only. The next treaty which contains a provision for extradition is the Ashburton treaty of 1842, by the 10th article of which the crimes of murder, assault with intent to commit murder, piracy, robbery, forgery, or the utterance of forged paper, "provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had there been committed."

By the convention of July 12, 1889, the following offenses were added to this list :—

1. Manslaughter, when voluntary, 2. Counterfeiting or altering money ; uttering or bringing into circulation counterfeited or altered money. 3. Embezzlement ; larceny ; receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained. 4. Fraud by bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries. 5. Perjury, or subordination of perjury. 6. Rape ; abduction ; child-stealing ; kidnapping. 7. Burglary, house-breaking or shop-breaking. 8. Piracy by the law of nations. 9. Revolt, or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master ; wrongfully sinking or destroying a vessel at sea, or attempting to do so ; assault on board ship on the high seas, with intent to do grievous bodily harm. 10. Crimes and offenses against the laws of both countries for the suppression of slavery and slave-trading.

Extradition is also to take place for participating in any of the crimes mentioned in this convention or in the aforesaid Tenth Article [of the treaty of 1842], provided such participation be punishable by the laws of both countries.

Extradition is not to take place in the case of political offenses, and an extradited person is to be tried for no offense other than that for which he was surrendered.

The United States have concluded extradition treaties as follows :—

Austria, 1856.
Baden, 1857.
Bavaria, 1853.
Belgium, 1874 and 1882.
Ecuador, 1872.
France, 1843.
Great Britain, 1889.

Hanover, 1855.
Italy, 1868, with supplements, 1869 and 1884.
Japan, 1886.
Luxemburg, 1883.
Mexico, 1861.
Netherlands, 1880.
Nicaragua, 1870.
Ottoman Empire, 1874.
Peru, 1870.
Prussia, 1852.
Russia, 1893.
San Salvador, 1870.
Spain, 1877, Supplement, 1882.
Sweden and Norway, 1860.

Several minor German States acceded to the treaties with Prussia and Bavaria.

The following general treaties contain articles with reference to extradition :—

Dominican Republic, 1867, articles 28–30.
Great Britain, 1794, article 27 ; 1842, article 10.
Hawaii, 1849, article 14.
Hayti, 1864, articles 38–40.
Orange Tree State, 1871, articles 8–12.
Swiss Confederation, 1850, articles 13–18.
Two Sicilies, 1855, articles 21–24.
Venezuela, 1860, articles 27–30.

Extradition of citizens.—The United States Government, holding the common-law doctrine that criminals should be punished where the criminal act was committed, was willing to surrender its own citizens, under extradition provisions ; but the Continental States of Europe, for the most part, punish their citizens for offenses committed abroad, and they were, therefore, unwilling to deliver them up ; and accordingly a clause is inserted in the greater number of extradition treaties with these states stipulating that "neither party shall be bound to deliver up its own citizens under the provisions of this treaty." Such a clause is found in the treaties with Austria, Baden, Bavaria, Belgium, Hanover, Japan, Luxembourg, Mexico, Netherlands, Ottoman Empire, Peru, Prussia, Spain, Sweden and Norway, and Hayti.

In the extradition treaty with Japan, this clause is followed by the proviso, that "they shall have the power to deliver them up if in their discretion it be deemed proper to do so." In the 24th article of the treaty of 1855 with the Two Sicilies, it is stipulated that "the citizens and subjects of each of the high contracting parties shall remain exempt from the stipulations of the preceding articles, so far as they relate to the surrender of fugitive criminals." It has become a question in the United States whether the clause, "neither is bound, etc.," is mandatory upon the President, or whether he may use his discretion in the matter. (See Snow's Cases on International Law, 158).

VII.

NATURALIZATION TREATIES.

NORTH GERMAN UNION, 1868.

Concluded February 22, 1868. Ratifications exchanged at Berlin, May 9, 1868. Proclaimed May 27, 1868.

"The President of the United States of America and His Majesty the King of Prussia in the name of the North German Confederation, led by the wish to regulate the citizenship of those persons who emigrate from the North German Confederation to the United States of America, and from the United States of America to the territory of the North German Confederation, have resolved to treat on this subject, and have for that purpose appointed Plenipotentiaries to conclude a convention, that is to say: The President of the United States of America, George Bancroft, Envoy Extraordinary and Minister Plenipotentiary from the said States near the King of Prussia and the North German Confederation: and His Majesty the King of Prussia, Bernhard König, Privy Councillor of Legation; who have agreed to and signed the following articles:"

ARTICLE I.—(Reciprocal naturalization conditions.)—"Citizens of theNorth German Confederation, who become naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States five years, shall be held by the North German Confederation to be American citizens, and shall be treated as such.

"Reciprocally, citizens of the United States of America who become naturalized citizens of the North German Confederation, and shall have resided uninterruptedly within North Germany five years, shall be held by the United States to be North German citizens, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

"This article shall apply as well to those already naturalized in either country as those hereafter naturalized."

ARTICLE II.—(Offences committed before emigration.)—"A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration; saving, always, the limitations established by the laws of his original country."

ARTICLE III.—(Former convention for extradition of fugitives from justice extended.)—"The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part, and Prussia and other States of Germany on the other part, the sixteenth day of June, one thousand eight hundred and fifty-two, is hereby extended to all the States of the North German Confederation."

ARTICLE IV.—(Renunciation of citizenship.)—"If a German naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American naturalized in North Germany renews his residence in the United States, without the intent to return to North Germany, he shall be held to have renounced his naturalization in North Germany. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country."

ARTICLE V.—(Duration of convention.)—"The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention."

ARTICLE VI.—(Ratifications.)—"The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by His Majesty the King of Prussia, in the name of the North German Confederation; and the ratifications shall be exchanged at Berlin within six months from the date hereof.

"In faith whereof, the Plenipotentiaries have signed and sealed this convention.

"Berlin, the 22d of February, 1868.

"GEORGE BANCROFT.
"BERNHARD KOENIG."

GREAT BRITAIN, 1870.

Convention Relative to Naturalization.

Concluded May 13, 1870. Ratifications exchanged at London, August 10, 1870. Proclaimed September 16, 1870.

Article I.—(Citizens of either country naturalized in the other).—"Citizens of the United States of America who have become, or shall become, and are naturalized according to law within the British dominions as British subjects, shall, subject to the provisions of Article II., be held by the United States to be in all respects and for all purposes British subjects, and shall be treated as such by the United States.

"Reciprocally, British subjects who have become, or shall become, and are naturalized according to law within the United States of America as citizens thereof shall, subject to the provisions of Article II., be held by Great Britain to be in all respects and for all purposes citizens of the United States, and shall be treated as such by Great Britain."

Article II.—(Renunciation of naturalization.)—"Such citizens of the United States as aforesaid who have become and are naturalized within the dominions of Her Britannic Majesty as British subjects, shall be at liberty to renounce their naturalization and to resume their nationality as citizens of the United States, provided that such renunciation be publicly declared within two years after the exchange of the ratifications of the present convention.

"Such British subjects as aforesaid who have become and are naturalized as citizens within the United States, shall be at liberty to renounce their nautralization and to resume their British nationality, provided that such renunciation be publicly declared within two years after the twelfth day of May, 1870.

"The manner in which this renunciation may be made and publicly declared shall be agreed upon by the Governments of the respective countries."

ARTICLE III.—"A naturalized citizen renewing his residence in his original country may be restored to citizenship there, and no claim shall be made for him by the country of his former naturalization."

ARTICLE IV.—Ratification, etc.

"JOHN LOTHROP MOTLEY.
"CLARENDON."

AUSTRIA-HUNGARY, 1870.

CONVENTION CONCERNING NATURALIZATION.

Concluded September 20, 1870. Ratifications exchanged at Vienna, July 14, 1871. Proclaimed August 1, 1871.

ARTICLE II.—(Offences committed before emigration—Violation of military laws.)—"A naturalized citizen of the one party on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country committed before his emigration, saving always the limitation established by the laws of his original country and any other remission of liability to punishment.

"In particular, a former citizen of the Austro-Hungarian Monarchy, who, under the first article, is to be held as an American citizen, is liable to trial and punishment, according to the laws of Austria-Hungary, for non-fulfilment of military duty: 1st, If he has emigrated, after having been drafted at the time of conscription, and thus having become enrolled as a recruit for service in the standing army, 2d, If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time; 3d, If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after a war has broken out. On the other hand, a former citizen of the Austro-Hungarian Monarchy, naturalized in the United

States, who by, or after, his emigration has transgressed the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered one, two, and three, can, on his return to his original country, neither be held subsequently to military service nor remain liable to trial and punishment for the non-fulfilment of his military duty."

ARTICLE III.—(Treaties of 3d July, 1856, and 8th May, 1848, remain in force.)—"The convention for the mutual delivery of criminals, fugitives from justice, concluded on the 3d July, 1856, between the Government of the United States of America on the one part, and the Austro-Hungarian Monarchy on the other part, as well as the additional convention, signed on the 8th May, 1848, to the treaty of commerce and navigation concluded between the said Governments on the 27th of August, 1839 [1829], and especially the stipulations of Article IV. of the said additional convention concerning the delivery of the deserters from the ships of war and merchant-vessels, remain in force without change."

ARTICLE IV.—(Renunciation of citizenship.)—"The emigrant from the one State, who, according to Article I. is to be held as a citizen of the other State, shall not, on his return to his original country, be constrained to resume his former citizenship; yet, if he shall of his own accord require it, and renounce the citizenship obtained by naturalization, such a renunciation is allowable, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country."

ARTICLE V.—The treaty shall continue in force for ten years, and thereafter until a notice to terminate it.

ARTICLE VI.—Ratifications.

"JOHN JAY
"BENST."[1]

[1] Other conventions concerning naturalization have been concluded with Bavaria, 1868; Baden, 1868; Belgium, 1868; Denmark, 1872; Ecuador, 1872; Hesse, 1868; Mexico, 1868; Sweden and Norway, 1869; and Würtemberg, 1868.

In the fourth article of the treaty with Mexico, it is agreed that "the intent not to return may be held to exist when the person naturalized in the one country resides in the other country more than two years, but this presumption may be rebutted by evidence to the contrary."

VIII.

CONVENTIONS CONCERNING DROIT D'AUBAINE; TRADE-MARKS; INDUSTRIAL PROPERTY; SUBMARINE CABLES.

DROIT D'AUBAINE.

Conventions for the mutual abolition of the droit d'aubaine and taxes on emigration have been concluded by the United States with Bavaria, The Grand Duchy of Hesse, Nassau, Saxony, Swiss Confederation, and Würtemberg. Similar provisions are also found in several general treaties.

"The municipal laws of all European countries formerly prohibited aliens from holding real property within the territory of the State. During the prevalence of the feudal system, the acquisition of property in land involved the notion of allegiance to the prince within whose dominions it lay, which might be inconsistent with that which the proprietor owed to his native sovereign. It was also during the same rude ages that the *jus albinagii* or *droit d'aubaine* was established; by which all the property of a deceased foreigner (movable and immovable) was confiscated to the use of the State, to the exclusion of his heirs, whether claiming *ab intestato*, or under a will of the decedent. In the progress of civilization, this barbarous and inhuman usage has been, by degrees, almost entirely abolished. This improvement has been accomplished either by municipal regulations, or by international compacts founded upon the basis of reciprocity. * * *

"The analogous usage of the *droit de détraction* (jus detractus) by which a tax was levied upon the removal from one State to another of property acquired by succession or testamentary disposition, has also been reciprocally abolished in

most civilized countries." (Wheaton's International Law, 8th ed., p. 138.)

The treaties with France of 1778 and 1800 stipulated for the abolition of these rights. And treaties on this subject were concluded with Bavaria, 1845, Grand Duchy of Hesse, 1844, Nassau, 1846, Saxony, 1845. Swiss Confederation, 1847, and Würtemberg, 1844. A large number of treaties contain provisions respecting the right to dispose of real property.

TRADE-MARKS.

Conventions for the protection of trade-marks have been concluded with Russia, 1868 and 1874, France, 1869, Austria-Hungary, 1871, German Empire, 1871, Great Britain, 1877, Brazil, Italy, 1882, Spain, 1882; also an article in the treaty with Belgium, 1884.

In these conventions, it is stipulated, that if citizens of either country fulfil the formalities required by the laws of the respective States in respect of trade-marks, they shall have the same rights therein as native citizens.

A treaty for the general protection of Industrial Property was entered into, March 20, 1883, by Belgium, Brazil, France, Guatemala, Italy, Netherlands, Portugal, Salvador, Serbia, Spain, Switzerland, and acceded to by Dominican Republic, Great Britain, Sweden and Norway, The United States, and Tunis.

PROTECTION OF SUBMARINE CABLES.

A convention for the protection of submarine cables was concluded at Paris, March 14, 1884, nearly all the European and American States taking part.

PART II.

TOPICS IN AMERICAN DIPLOMACY.

THE MONROE DOCTRINE.

"The so-called Monroe Doctrine, at the time it was announced was partly a measure of self-defense against the threatened aggression of the European Alliance, and partly the expression of the natural antagonism between the principles of free government, as exemplified by the history of the United States, and the principles of monarchical despotism, as exhibited in the policy of the four great powers of continental Europe.

The treaty of Vienna gave peace to Europe; but it restored the despotism of the old régime in all the countries of continental Europe with the exception of France. The liberal ideas and aspirations awakened by the French revolution and the wars of Napoleon were suppressed; and that they should remain forever suppressed was the firm determination of the monarchs of these countries. In England, on the other hand, when the fear of French ascendency was removed, a strong liberal reaction set in which forced the government in the end to break with its continental allies.

The treaty which formed the basis of the European Alliance —erroneously termed Holy Alliance—was signed at Chaumont, in France, on March 1, 1814.[1] This was a union of the four powers—Austria, Russia, Prussia, and England—primarily for the efficient prosecution of the war; and secondarily, to maintain the peace of Europe in the future. It was renewed and made permanent by the treaty of alliance signed at Vienna by the same powers, March 25, 1815; and after the second fall

[1] Hertslet: Map of Europe by Treaty, p. 2043.

of Napoleon, at Waterloo, it was reaffirmed and continued, with some additions by the treaty of alliance at Paris, November 20, 1815.[1]

The preamble of this treaty contains the following declaration:

"Desirous moreover of drawing closer the ties which unite them (the four powers) for the common interests of their peoples, [they] have resolved to give to the principles solemnly laid down in the treaties of Chaumont and Vienna the application the most analogous to the present state of affairs, and to fix beforehand the principle which they propose to follow in order to guarantee Europe from dangers by which she may still be menaced."

Then follow in five articles the details providing for any future renewal of the disturbance of Europe by Napoleon or France. By the sixth article the powers agree to renew their meetings at fixed periods. And before separating the first of those meetings was fixed for the year 1818.

In accordance with this agreement at Paris, these powers met in the conference of Aix-la-Chapelle, in October, 1818.[2] At this conference the evacuation of French territory by the allied armies was decreed, and France was admitted as a member of the alliance, thus completing the grand alliance of the five great powers. After transacting certain business and providing for future meetings, a declaration, setting forth the principles by which they would be guided, was issued. It is proclaimed that the intimate union of the monarchs offers to Europe the most sacred pledge of its future tranquillity. "It has no other object than the maintenance of peace, and the guarantee of those transactions on which the peace was founded and consolidated. * * * The repose of the world will be constantly their motive and their end."

The language of this declaration is extremely vague; and the English representatives seemed to regard it as harmless. Lord Bathurst (acting Foreign Secretary) wrote to Castlereagh, November 10, "You have so neutralized the protocol and declaration, that there cannot be any objection, I imagine, from any quarter against them." The English cabinet had feared that there might be something in these acts which it

[1] Hertslet, I., 372. [2] Hertslet, I., 571.

would be difficult to explain in parliament. "The Russian must be made to feel," said Lord Liverpool, "that we have a parliament and a public, to which we are responsible, and that we cannot permit ourselves to be drawn into views of policy which are wholly incompatible with the spirit of our government."[1] There was one member of the cabinet, however, who was opposed to the whole scheme of the European alliance; this was Canning. Lord Bathurst, in writing to Castlereagh, October 20, says that the Cabinet are opposed to the Congress of Aix-la-Chapelle publicly announcing continued meetings of the allied powers at fixed points. The next meeting might be fixed but no others. The Cabinet, except Canning, are not averse to the system, but to the publicly announcing it. Canning objects to the system itself. "He does not consider the 9th article as having been generally understood to apply to any meetings except for the purpose of watching the internal state of France, as far as it may endanger the public tranquillity. He thinks the system of periodical meetings of the four great powers, with a view to the general concerns of Europe, new, and a very questionable policy; that it will necessarily involve us deeply in all the politics of the continent, whereas our true policy has always been not to interfere except in great emergencies, and then with a commanding force. He thinks that all other states must protest against such an attempt to place them under subjection; that the meetings may become a scene of cabal and intrigue; and that the people of this country may be taught to look with jealousy for their liberties, if our court is engaged in meetings with great despotic monarchs, deliberating upon what degree of revolutionary spirit may endanger the public security, and therefore require the interference of the alliance."

The Emperor of Russia was disappointed because the treaty was not more definite; he wished it to be one of "explicit, universal, and reciprocal guarantee."

Events soon occurred which forced an interpretation of the language of these treaties and declarations; when it was found that the three courts of Russia, Austria, and Prussia considered the allies as the constituted guardians of Europe. The peace,

[1] Letters of Castlereagh, XII., 62, 63.

the internal prosperity of States, even the sentiments of religion and morality were to be objects of the care of the alliance. England, however, could see no authority in the alliance to erect the principle of intervention in the internal affairs of States into a general rule.

The people of Spain, abandoned by their kings in 1808, had made a brave resistance to Napoleon's aggressions, and in 1812 had formed a liberal constitution; but at the general peace in 1815, they had been again delivered over to that bigoted tyrant, Ferdinand VII. In 1820 (March 8), the army which had been assembled at Cadiz to be sent against the rebellious Spanish-American Colonies, revolted, and refused to embark. This stand taken by the army was followed by an uprising of the people throughout Spain. The liberal constitution of 1812 was revived, and forced upon the reluctant king, and a new era seemed to open for the Spanish nation.

The revolution in Spain was followed, July 2, 1820, by a like movement of the army and people of Naples. Having nothing better at hand, they also proclaimed the Spanish constitution of 1812. A similar insurrection took place in Portugal on the 23d of August.

Alarmed by these popular movements, the Emperors of Austria and Russia proposed a meeting of the alliance to consult upon measures to be taken for the peace of Europe. The representatives of Austria, Russia, and Prussia, met accordingly in November, 1820, at Troppau.

The three powers issued a circular, in which they call attention to the wickedness and danger of these rebellions, and declare that "the alliance formed under the most trying circumstances, * * * affirmed by the conventions of 1815 and 1818," had freed Europe from the military tyranny of the representative of revolution, should now be in a position "to put a curb on a force no less tyrannical and no less detestable—that of revolt and crime."

It was decided to act first against Naples as presenting the most pressing danger; and the deliberations at Troppau were transferred to Laybach, where the final arrangements for intervention in the affairs of Naples were made. In accordance

[1] Hertslet, I., 658.

with these arrangements, an Austrian army began its march to southern Italy, March 4, 1821, and entered Naples the 23d of the same month; the constitutional government was suppressed, and Ferdinand II. was restored to absolute authority.

In this same month an insurrection broke out in Piedmont; and a division of the Austrian army was directed toward that state, and with the same result as in Naples. The Greek revolution began too while the powers were still at Laybach.

England was not officially represented at Troppau and Laybach, although the English Ambassador to Vienna, Sir C. Stewart, was present to watch the proceedings. France, although represented, refused to accede to the final act of intervention in Italy. England not only refused to join in the deliberations, she also protested, in the circular despatch of January 19, 1821, against the principles which the three powers had set forth in the Troppau circular.[1]

Before separating, the sovereigns of Austria, Russia, and Prussia, arranged for another meeting in the course of the following year, to take into consideration the affairs of Greece, Italy, and more especially of Spain; and Verona was fixed upon as the place of the Congress, which assembled about the middle of October, 1822. And this time all the five powers of the alliance were represented, England believing the questions to be discussed involved her interests. The death of Castlereagh, who was to represent England, occurred a short time before the meeting of the Congress, and Wellington was sent in his stead; while at home, Canning became minister for foreign affairs.

The great question at issue in the Congress was the intervention in the affairs of Spain. Wellington's instructions were, to assent in no case to any intervention in Spanish affairs. Spain, said Canning, if left to herself, would emerge from her state of disorder; there was no direct danger, he said, to neighboring States growing out of Spanish affairs. In the Congress, Wellington protested strongly against intervention; and when it was found that his protest would not prevent intervention in Spain, he withdrew from the Congress (November 30, 1822). After issuing a circular,[2] the Congress broke up

[1] Hertslet, I., 664.

[2] Brit. and For. Stat. Pap., X., 921.

about the middle of December, with the secret understanding that France should undertake the suppression of the Spanish Constitution. In its own counsels, however, the French government was divided on the question of undertaking the Spanish war; there was a strong liberal party in France, opposed, not only to this particular case of intervention, but to all dictation of the more Eastern States. The liberal *Journal dés Debats* pointed out the danger of allowing Eastern and absolute sovereigns to interfere in determining the form of government of the Western and constitutional powers. The war party, backed by the influence of Russia and Austria, finally prevailed; and the French army, which had been collected on the Spanish frontier, ostensibly for the purpose of quarantine against the yellow fever then prevailing in Northern Spain, crossed the Bidassoa in April, 1823. In October all opposition of consequence had been overcome, and the king restored to absolute power. Thus, French bayonets restored Ferdinand VII., and with him, the rule of bigotry and intolerance which have continued to blight the destinies of Spain to the present day. The popular constitution, faulty no doubt, but under which the people began to work out their own destiny, was swept away, and the great opportunity of Spanish progress was lost.

A majority of the people of England were probably ready to take up arms in aid of the Spanish nation; the liberals in parliament, led by Brougham, Sir James Mackintosh and others attacked vigorously the neutral policy of the government. But Canning believed that it was not the interest of England to plunge into a war with all the continental powers combined for a mere principle, and with no advantage to England, and with little hope of effective aid to Spain. He carried his point in parliament, though against a strong opposition.

The Congress of Verona was the last meeting of the Quintuple Alliance for the regulation of the internal affairs of European States. The principles set forth in the circulars and declarations of Troppau, Laybach, and Verona, formed a political code for Europe of the most absolute type; it meant that the people were to have no voice in the formation of their political institutions. Count Nesselrode said of the Spanish constitution of 1812, that it was "a constitution which estab-

lished for the people a right of sovereignty, of which the exercise is happily impossible, but of which the simple theory, once admitted, is the child of calamity—a constitution which calls to the making of laws the sole class interested in their absence."

The continental powers, aided by the temporary revulsion of sentiment against the enormities of the French revolution and the outrageous schemes of Napoleon, were making a last effort to restore and maintain the old régime and the divine right of kings. But their success was of short duration; hardly more than a quarter of a century had passed before nearly all these despotic powers were forced to yield to the demands of popular liberty. It was against the extension of this system that the United States protested in the declaration of the Monroe Doctrine.

The Congress of Verona marks the final breaking up of the Quintuple Alliance by the practical withdrawal of England. Thereafter the four continental powers would appear to have revised and set up the "Holy Alliance" as their guiding principle; and it has been usual to designate the previous Alliance by the same title. The following is the text of the Treaty of Holy Alliance, and of the secret treaty of Verona:

TREATY OF THE HOLY ALLIANCE.

Signed at Paris, September 26, 1815.

"In the name of the Holy and Invisible Trinity.

"Their Majesties the Emperor of Austria, the King of Prussia, and the Emperor of Russia, in consequence of the *great events*, which have distinguished in Europe the course of the three last years, and especially of *the blessings*, which it has pleased Divine Providence to shed upon those states, whose governments have placed their confidence and their hope in it alone, having acquired the thorough conviction, that it *is necessary* for *insuring* their continuance that the several powers, in their mutual relations, adopt the sublime truths which are pointed out to us by the eternal religion of our Saviour God—

"*Declare solemnly*, That the present act has no other object than to show, in the face of the universe, their unwavering determination to adopt for the only rule of their conduct, both in the

administration of their respective states, and in their political relations with every other government, the precepts of their holy religion, the precepts of *justice, of charity and of peace*, which, far from being solely applicable to private life, ought, on the contrary, directly to influence the resolutions of princes, and to guide all their undertakings, as being the only means of giving *stability* to human institutions, and of remedying their imperfections—their majesties have, therefore, agreed to the following articles:

"ARTICLE I.—In conformity to the words of the Holy Scriptures, which command all men to regard one another as brethren, the three contracting monarchs will remain *united*, by the bonds of a true and indissoluble fraternity; and, considering each other as compatriots, they will lend one another, on every occasion, and in every place, assistance, aid, and support; and, regarding the subjects and armies, as the fathers of their families, they will govern them in the spirit of fraternity with which they are animated, for the protection of *religion, peace and justice.*

"ARTICLE II.—Therefore, the only governing principle between the above-mentioned governments and their subjects, shall be that of rendering *reciprocal services;* of testifying, by an unalterable beneficence, the mutual affection with which they ought to be animated; of considering all as only the members of one Christian nation, the three allied powers *looking upon themselves as delegated by Providence* to govern three branches of the same family, to wit: Austria, Prussia, and Russia, confessing, likewise, that the Christian nation, of which they and their people form a part, have really no other sovereign than Him to whom alone power belongs of right, because in Him alone are found all the treasures of love, of science and of wisdom, that is to say, God, our Divine Saviour, Jesus Christ, the word of the Most High, the word of Life.

"Their Majesties, *therefore*, recommend, with the most tender solicitude, to their people, as the only means of enjoying that peace which springs from a good conscience, and which alone is durable, to fortify themselves every day more and more in the principles and exercise of the duties which the divine Saviour has pointed out to us.

"ARTICLE III.—All powers which wish solemnly to profess the sacred principles which have delegated this act, and who shall acknowledge how important it is to the happiness of nations, too long disturbed, that *these truths* shall henceforth exercise upon

human destinies, all the influence which belongs to them, shall be received with as much readiness as affection, into this *holy alliance.*" [1]

SECRET TREATY OF VERNOA.

Signed November 22, 1822.

"The undersigned, specially authorized to make some additions to *The Treaty of the Holy Alliance*, after having exchanged their respective credentials, have agreed as follows:

"ARTICLE. I.—The high contracting powers being convinced that the system of *representative* government is equally as *incompatible* with the monarchical principles as the maxim of the sovereignty of the people with the divine right, engage mutually, in the most solemn manner, to use all their efforts to *put an end* to the system of *representative* governments, in whatever country it may exist in Europe, and to prevent its being introduced in those countries where it is not yet known.

"ARTICLE II.—As it cannot be doubted that the *liberty* of the *press* is the most powerful means used by the pretended supporters of the rights of nations, to the detriment of those of Princes, the high contracting parties promise reciprocally to adopt all proper measures to *suppress* it, not only in their own states, but, also, in the rest of Europe.

[1] Unlike ordinary treaties, the Holy Alliance was a personal union of sovereigns, signed, not by their ministers, but by their own hands. The original signitaries were the sovereigns of Russia, Austria, and Prussia. Louis XVIII. signed it November 19; and within the space of two years, nearly all the secondary powers of Europe acceded to it. The Prince-Regent of England, though approving the principles of the alliance, was obliged to refuse his signature, because, as he wrote, "the forms of the British Constitution preclude me from acceding formally to this treaty, in the shape in which it has been presented to me." Wellington said bluntly to the Emperor Alexander, "The idea of your Imperial Majesty would not be understood in parliament. It would be impossible for the Prince-Regent to adhere to a treaty without any basis, and of which one cannot know the exact import." (Capefigue: Histoire de la Restoration, III., 215).

The Holy Alliance was a sentimental conception of the Emperor Alexander, assisted by that remarkable person, the Baroness von Crudner. "The original of this treaty," says Capefigue, "is entirely in the handwriting of the Emperor Alexander, with corrections by Madame Crudner. The word *Sainte Alliance* is written by this extraordinary woman."

"ARTICLE III.—Convinced that the principles of religion contribute most powerfully to keep nations in the state of passive obedience which they owe to their Princes, the high contracting parties declare it to be their intention to sustain, in their respective states, those measures which the clergy may adopt, with the aim of ameliorating their own interests, so intimately connected with the preservation of the authority of Princes; and the contracting powers join in offering their thanks to the Pope, for what he has already done for them, and solicit his constant cooperation in their views of submitting the nations.

ARTICLE IV.—The situation of Spain and Portugal unite unhappily all the circumstances to which this treaty has particular reference. The high contracting parties, in confiding to France the care of putting an end to them, engage to assist her in the manner which may the least compromise them with their own people and the people of France, by means of a subsidy on the part of the two empires, of twenty millions of francs every year, from the date of the signature of this treaty to the end of the war.

"ARTICLE V.—In order to establish in the Peninsula the order of things which existed before the revolution of Cadiz, and to insure the entire execution of the articles of the present treaty, the high contracting parties give to each other the reciprocal assurance, that as long as their views are not fulfilled, rejecting all other ideas of utility, or other measures to be taken, they will address themselves with the shortest possible delay, to all the authorities existing in their states, and to all their agents in foreign countries, with the view to establish connections tending towards the accomplishment of the objects proposed by this treaty.

"ARTICLE VI.—This treaty shall be renewed with such changes as new circumstances may give occasion for, either at a new Congress, or at the Court of one of the contracting parties, as soon as the war with Spain shall be terminated.

"ARTICLE VII.—The present treaty shall be ratified, and the ratifications exchanged at Paris within the space of six months.

"(Signed) For Austria, Metternich; for France, Chateaubriand; for Prussia, Bernstet; for Russia, Nesselrode."

The question of intervention in Spanish-American affairs to aid Spain to reconquer her rebellious colonies had been broached at the congress of Aix-la-Chapelle, and again at Verona, but it

had then been laid aside; but in the autumn of 1823, when France had suppressed the Liberal government in Spain, the proposition was revived, and another meeting of the allies was proposed for the purpose of considering the matter.

The war of independence had begun in these colonies in 1810. When the kings, Charles IV., and Ferdinand VII., had handed over the crown of Spain to Napoleon, at Bayonne, in 1808, the people of Spain did not acquiesce in this disposition of their country, and prepared to defend it against the French. But for a time there was a lack of unity in their counsels, and various rival bodies (*Juntas*) contended for the supreme central authority in the state. Each of these juntas, as well as the new king—Joseph Bonaparte—claimed dominion of the colonies of Spain. Those in America, however, remained loyal to King Ferdinand, and anxious as to their fate in the event of the conquest of Spain by Napoleon, they began to set up provisional governments in the several provinces, and in some cases expelled the Spanish governors. The Regency, which had taken the place of the various juntas in Spain, at a time when it could not defend its own territory, yet sent troops to the colonies in 1810 to suppress all independent or revolutionary movements therein. Acts of violence were committed which were met by counter violence, and thus the "war of death" began, the atrocities and brutality of which has hardly been equaled in modern times. At first there was little thought of independence among the people, but it soon developed, and in 1811, Venezuela, New Granada and Mexico, declared their independence; other colonies followed suit, namely, Buenos Ayres in 1816, Chili in 1818, and Peru in 1821. These declarations bear a close resemblance to that of the United States; and the form of government adopted in its essential features was, in most cases, modeled after the constitution of the North American Republic. The most radical difference was in respect to religion, the Roman Catholic Church being established by the new constitutions as a state church.

The war continued in Peru till 1824, but in other states it was practically ended much earlier—in Buenos Ayres, 1817, in Columbia, Mexico, and Chili, 1821.

Having given a brief outline of affairs in Europe and in Spanish-America during the period of the formation of the

Monroe doctrine, let us now turn to the United States and see what was taking place there at the same time.

The Origin and Development of the Monroe Doctrine.

The policy of not intermeddling in strictly European politics, which has become a maxim in the history of the United States, was, in its origin, the result of necessity rather than of choice; it was the policy of a state not yet in a position to make its power respected abroad, if, indeed, it could defend itself at home. The statesmen of the revolutionary period began by seeking alliances among the sovereigns of Europe; and it was chiefly through their unfortunate engagements in the treaty of alliance with France, of 1778, that the United States were led to see the danger of entangling foreign relations.

When the war broke out in 1793 between England and France, the last-named power demanded of the United States the fulfillment of the stipulations of the above-mentioned treaties. But without a navy, as the United States then were, it was utterly impossible to carry out the stipulation of guarantee, and to permit France to use our ports for the purpose of fitting out cruisers and the sale of prizes as she claimed the right to do, while England was excluded from those privileges would be equivalent to taking part in the war. The President and the Federalist leaders felt that, in the condition of the country at that time to join in a European war would endanger the very existence of republican government in America. England still held commanding positions on the western lakes; an insurrection was threatened in Western Pennsylvania; serious party dissensions existed; the fundamental institutions of government were hardly yet organized and settled; the debts of the country in proportion to its resources were very large; and Indian wars existed in the west. In view of these circumstances and the exaggerated pretensions of France, the government decided to maintain a strictly neutral position; accordingly a proclamation to that effect was issued by President Washington, April 22, 1793. And to give legal force to the principles of this proclamation, an act was passed the next year, June 5, 1794, since known as the first "Neutrality Act." It was to be in force for two years, but it was continued

by the act of 1797, and made permanent by the act of 1800.[1] To maintain this neutrality and the rights of a neutral cost the country ultimately a war with England, and a *quasi*-war with France. France was indignant not only at the refusal to allow her to use our ports for the purpose of fitting out cruisers and of condemning prizes, but also at the declaration of neutrality, and later the concluding of a treaty with England (the Jay treaty of 1794). England on her part was intolerant of neutral rights, and especially of the rights of neutral commerce which might benefit France. Thus it was, that during nearly twenty years of the wars of the French revolution, the weak republic of the United States was buffeted between the arbitrary blows of the two chief belligerents; it was equally dangerous to go to war and to remain neutral. Between the Orders in Council and the Imperial decrees, American commerce was destroyed. It was during this period that the conviction became settled in the minds of Americans that their welfare and safety demanded an entire isolation from and independence of European politics. So strong did this feeling become that finally in 1812, the nation went to war with England, mainly in defense of the right to be let alone.

Washington was among the first to perceive the danger to the new state of taking part in European wars; and he saw in this a reason for superseding the government of the confederacy by a stronger and more united government to prevent the separate states from involving themselves in foreign complications. Even as early as January 1, 1788, he wrote to Jefferson:

"The American revolution has spread through Europe a better knowledge of the rights of mankind, the privileges of the people, and the principles of liberty than has existed in any former period; a war in that quarter is likely to be kindled, especially between France and England; in the impending struggle, an energetic general government must prevent the several states from involving themselves in the political disputes of European powers. The situation of the United States is such as makes it not only unnecessary but extremely imprudent for them to take part in foreign quarrels. Let them wisely and properly improve the advantages which nature has given them, and conduct themselves with cir-

[1] 1 Stat. at L. 381. In 1818 a more stringent act was passed.

cumspection. By that policy, and by giving security to property and liberty they will become the asylum of the peaceful, the industrious, and the wealthy from all parts of the civilized world."[1]

The necessity of keeping aloof from European disputes which he had foreseen, was still more impressed upon his mind by the events of his two administrations, and his vain attempt to reconcile the differences of the two parties in American politics, the French and the English. He therefore dwells upon the subject with considerable insistence in his Farewell Address:

"The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

"Europe has a set of primary interests which to us have none or a very remote relation. Hence, she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities.

"Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war as our interests, guided by justice, shall counsel.

"Why forego the advantages of so peculiar a situation? Why quit our own to stand on foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?

"It is our true policy to steer clear of permanent alliances with any portion of the foreign world, so far, I mean, as we are now

[1] Bancroft: History of the Confederation, Vol. II., 299.

at liberty to do it ; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs, that honesty is the best policy. I repeat, therefore, that those engagements be observed in their genuine sense. But in my opinion, it is unnecessary and would be unwise to extend them. Taking care always to keep ourselves by suitable establishments on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

"Harmony and a liberal intercourse with all nations are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial plan ; neither seeking nor granting exclusive favors or preferences ; consulting a natural course of things ; diffusing and diversifying by gentle measures the stream of commerce, but forcing nothing : establishing with powers so disposed (in order to give trade a stable course, to define the rights of our merchants, to enable the government to support them) conventional rules of intercourse, the best that present circumstances and natural opinions will permit, but temporary and liable to be from time to time abandoned or varied as experience and circumstances shall dictate ; constantly keeping in view that it is folly in one nation to look for disinterested favors from another—that it must pay with a portion of its independence for whatever it may accept under that character—that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude with not having given more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

"In relation to the still subsisting war in Europe, my proclamation of the 22d of April, 1793, is the index to my plan. Sanctioned by your approving voice, and by that of your representatives in both houses of Congress, the spirit of that measure has continually governed me, uninfluenced by any attempts to deter or divert me from it.

"After deliberate examination, with the aid of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take, and was bound in duty and interest to take, a neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it with moderation, perseverance and firmness.

"The considerations which respect the right to hold this conduct, it is not necessary on this occasion to detail. I will only observe, that according to my understanding of the matter, that right, so far from being denied by any of the belligerent powers, has been virtually admitted by all.

"The duty of holding a neutral conduct may be inferred, without anything more from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity toward other nations.

"The inducements of interest for observing that conduct will best be referred to your own reflections and experience. With me, a predominant motive has been to endeavor to gain time to our country to settle and mature its yet recent institutions; and to progress without interruption to that degree of strength and constancy which it is necessary to give it, humanly speaking, the command of its own fortune."

In his first inaugural address, John Adams said:

"Although it is very true that we ought not to involve ourselves in the political system of Europe, but to keep ourselves always distinct and separate from it if we can, yet to effect this separation, early, punctual, and continual information of the current chain of events, and of the political projects in contemplation, is no less necessary than if we were directly concerned in them. It is necessary, in order to the discovery of the efforts made to draw us in the vortex, in season to make preparations against them. However we may consider ourselves, the maritime and commercial powers of the world will consider the United States of America as forming a weight in that balance of power in Europe which can never be forgotten or neglected."[1]

Jefferson, whose radical democratic principles made him condemn all monarchical governments, would naturally wish to have as little to do with them as possible. In 1801, March 18, he wrote to Thomas Paine:—

"Determined as we are to avoid, if possible, wasting the energies of our people in war and destruction, we shall avoid implicating ourselves with the powers of Europe, even in support of principles which we mean to pursue. They have so many other

[1] Statesman's Manual, I., p. 111.

interests different from ours, that we must avoid being entangled in them."[1]

On October 3d, 1801, he wrote to William Short:—

"We have a perfect horror at everything like connecting ourselves with the politics of Europe. It would indeed be advantageous to us to have neutral rights established on a broad ground; but no dependence can be placed in any European coalition for that. They have so many other bye-interests of greater weight, that some one or other will always be bought off. To be entangled with them would be a much greater evil than a temporary acquiescence in the false principles which have prevailed. Peace is our most important interest, and a recovery from debt. We feel ourselves strong and growing stronger. * * * If we can delay but for a few years the necessity of vindicating the laws of nature on the ocean, we shall be the more sure of doing it with effect. The day is within my time as well as yours, when we may say by what laws other nations shall treat us on the sea. And we shall say it. In the mean time we wish to let every treaty we have drop off without renewal. We call in our diplomatic missions, barely keeping up those to the most important nations. There is a strong disposition in our countrymen to discontinue even these; and very possibly it may be done. Consuls will be continued as usual. The interest which European nations feel, as well as ourselves, in the mutual patronage of commercial intercourse, is a sufficient stimulus on both sides to insure that patronage. A treaty contrary to that interest renders war necessary to get rid of it."[2]

The opinions and the policy of the first three presidents sufficiently show the drift of American thought upon this question. Self-defense was the primary motive of the policy of isolation. To be involved in the wars of Europe, it was felt would endanger the very existence of the new republic; to gain time and to tide over the period of weakness incident to the founding of a new state and new institutions were the great objects of Washington and his successors. They saw that European complications were the chief danger, for on this continent there were no powerful neighbors,—and that

[1] IV. Jefferson's Works, 370.

[2] IV. Jefferson's Works, 414: Gilman's Life of Munroe, 165, 166.

there should be none was a part of their general policy. So we find the feeling very strong that Louisiana should at all hazards be kept out of the hands of England or France, either one of which in such a position would be a dangerous neighbor. This was the chief motive in purchasing that territory from France in 1803.

Up to this time, there seems to have been no particular sentiment involved other than self-interest. To be sure the Americans sympathized with popular governments and movements wherever tried, but as yet there had been no such movement on the western continent, except that of the United States. There was yet no intimation of the Spanish-American outbreak.

With the overthrow of the Spanish government by Napoleon, and the consequent attempt of the Spanish-American colonies to set up their independence, begins a new phase of the American sentiment, which culminated a few years later in the now famous declaration of President Monroe.

The active mind of Jefferson was foremost in grasping the new idea—of including the whole of the new world in opposition to monarchical Europe. In respect to the struggle of the Spaniards against Napoleon, Jefferson wrote to Governor Claiborne, October 29, 1808:—

"The truth is that the patriots of Spain have no warmer friends than the administration of the United States; but it is our duty to say nothing and to do nothing for or against either. If they succeed we shall be well satisfied to see Cuba and Mexico remain in their present dependence, but very unwilling to see them in that of either France or England, politically or commercially. We consider their interests and ours as the same, and that the object of both must be to exclude all European influence from this hemisphere."[1]

The people of the United States took naturally a lively interest in the Spanish-American struggle for independence. At the close of their own war with England in 1815, under the lead of a younger and more sanguine generation, the United States had finally established not only the right to exist, but

[1] V. Jefferson's Works, 381

also experienced a sense of self-sufficiency and continental importance, not possible before. Freed from danger to themselves, they could afford to indulge in the sentiment of sympathy for the neighbors to the south who were following their own earlier example. Not only sympathy, but material aid was furnished to those states by citizens of the Union; and to such an extent indeed, that the government felt called upon, in order to preserve its neutral character, to demand a more stringent neutrality act. And thereupon Congress amended the act of 1794 with that view.

Of public men Henry Clay was the first to espouse openly the cause of the Spanish-American States; by his enthusiasm and his eloquence, he did more, perhaps, than any one else to arouse a sentiment in their favor, and to bring about the early recognition by the American government of the independence of those states. In his speech in the House of Representatives in January, 1816, he expressed his sympathy with the South American colonists, and again in his speech on the Neutrality Bill, January 24, 1817; but his great speech in this cause and one of the greatest of his life was that on Emancipation of South America, March 24, 1818.

In the autumn of 1817, President Monroe appointed three commissioners to proceed to South America to obtain information in respect of the condition and political prospects of the Spanish colonies. When the bill appropriating money for the expenses of this commission [1] came up at the next session of Congress, 24th March, 1818, Mr. Clay offered an amendment to the effect that an additional sum be appropriated for one year's salary and an outfit to a minister to the United Provinces of Rio de la Plata. Speaking in favor of his amendment, Mr. Clay said:—

"In the establishment of the independence of Spanish America, the United States have the deepest interest. I have no hesitation in asserting my firm belief, that there is no question in the foreign policy of this country, which has ever arisen, or which I can conceive as ever occurring, in the decision of which we have had or can

[1] The commission consisted of Cæsar A. Rodney, John Graham, and Theodoric Bland, with H. M. Brackenridge as secretary. They sailed in November, 1817, and returned (except Bland) July, 1818.

have so much at stake. This interest concerns our politics, our commerce, our navigation. There cannot be a doubt that Spanish America, once independent, whatever may be the form of the government established in the several parts, these governments will be animated by an American feeling, and guided by an American policy. They will obey the laws of the system of the new world of which they will compose a part, in contradistinction to that of Europe, without the influence of that vortex in Europe, the balance of power between its several parts, the preservation of which has so often drenched Europe in blood. America is sufficiently remote to contemplate the new wars which are to afflict that quarter of the globe, as a calm, if not a cold and indifferent spectator. In relation to those wars, the several parts of America will generally stand neutral. And as, during the period when they rage, it will be important that a liberal system of neutrality should be adopted and observed, all America will be interested in maintaining and enforcing such a system. The independence of Spanish America, then, is an interest of primary consideration."[1]

Clay's amendment was rejected by the house by a vote of 115 to 45. But on the 3d of April, 1820, Clay carried a resolution in the House, 80 to 75, to the effect that it was expedient to send ministers to any of the governments of South America "which have established or are maintaining their independence of Spain." Again on the 10th February, 1821, he carried a similar resolution through the House.

The speeches of Clay were translated into Spanish and read at the head of the armies of the Southern Republics. A year later the executive and the Senate took the same view.

In the meantime, from the beginning of Monroe's administration, the president and cabinet had been occupied from time to time with the same subject. Madison's policy had been to observe a strict neutrality between the two parties to the war.

"It was anticipated at an early stage," said Mr. Munroe in his first annual message, "that the contest between Spain and the colonies would become highly interesting to the United States. It was natural that our citizens should sympathize in events which affected their neighbors. * * * Should the colonies establish

[1] Colton's Life of Clay, I., 216, 217, 222.

their independence, it is proper now to state, that this government neither seeks nor would accept from them any advantage in commerce or otherwise which will not be equally open to all other nations. The colonies will in that event become independent states, free from any obligations to or connection with us, which it may not then be their interest to form on the basis of a fair reciprocity."

On the 20th of September, 1817, J. Q. Adams, the new secretary of state, arrived in Washington, and had his first interview with the president. The president, says Adams in his diary, entered largely upon the motives of the mission which he had contemplated sending to South America, and expressed the wish to converse further. The 29th of September, Crawford, secretary of the treasury, said Clay was determined, at the next session of congress, to propose the acknowledgment of the independence of the South American insurgents, October 24.—The president said he desired to consult on South American affairs. "He should put the question whether we should now acknowledge the government of Buenos Ayres?" The question was discussed in the cabinet on the 25th, and again on the 28th, but no decision arrived at; on the 29th of October Adams consults with the agent of the Buenos Ayres government; and the next day it was decided in cabinet meeting to send the frigate Congress with commissioners to Buenos Ayres. "I also," says Adams," explicitly avowed my opinion that it is not now expedient for the president to acknowledge the government of Buenos Ayres. But the president postponed his determination upon this."

Clay's advocacy of this proposition was looked upon by the cabinet as an attack upon the administration. December 6, 1817, Adams says, "Mr. Clay had already mounted his South American great horse." "Clay's project is that in which John Randolph failed—to control or overthrow the executive by swaying the House of Representatives. He intends to bring forward his motion to acknowledge the government of Buenos Ayres, and perhaps Chili. He professes a wish to harmonize with the executive as to the manner of bringing it forward." December 6.—Mr. Calhoun pronounced himself most decisively against the measure. "I had done the same before; the President now, after some little hesitation did the same."

December 24, 1817.—Dinner at Crawford's. "Clay came out with great violence against the course of the executive on South American affairs. Clay is as rancorously benevolent as John Randolph. He has taken his stand of opposition from the first day of the session, and his object is to make grounds for it."

January 12, 1818.—Hyde de Neuville (the French minister at Washington) told Adams that the Duke de Richelieu had written that there was a convention about South American affairs on foot in Europe. May 1, 1818.—Adams has a conversation with Correa (the Portuguese minister) on South America and the European alliance. Correa said the European alliance would take part against South America. Adams answered that "if the European alliance undertook to settle matters which concerned us so closely, without consulting us, they should not be surprised if we acted without consulting them." May 3, 1818.—Correa says the affairs of South America are to be arranged without the intervention of Europe. June 25, 1818.—Adams asks Bagot (the English minister), what the allies were doing about South America. July 25, 1818.—The president asks Adams to see Bagot and propose the co-operation of the two governments to promote the independence of South America. "All South America, Mexico, and the islands included."

November 7, 1818.—There was a cabinet meeting on the question of the recognition of certain South American states. The decision was against it.

Instructions appear to have been sent to Rush, who had taken Adams' place as minister to England, to ascertain if possible the intentions of the European alliance in this regard. On the 16th of July, 1818, we find Rush broaching the subject to Castlereagh, the minister of Foreign Affairs. Castlereagh replied that no plan had as yet been matured. "Difficulties had arisen with Spain, on points the most essential." Even the place for the mediation had not been fixed upon. The allied sovereigns, he said, when assembled at Aix-la-Chapelle in the autumn, would probably take up the subject. Some days later, July 31, Castlereagh sought another interview with Rush and laid before him what had transpired touching the question of South America. An invitation to mediate had been received from Spain, but on conditions not very liberal;

yet the British answer approved in general, admitting the supremacy of Spain, but demanding the opening of trade with the colonies to the world, the mother country having a reasonable preference. The previous year England had made a similar proposition—asking no privileges for herself but insisting upon freedom of trade and non-employment of force.

Then Castlereagh asked what were the views of the United States government.

Rush replied, that the United States desired the complete independence of the Spanish colonies and would decline taking part, if they took part at all, on any other basis.

Castlereagh was disappointed with this answer.[1]

Adams' Diary, December 7, 1818.—"I told Bagot that as the congress of Aix-la-Chapelle had refused to take up the subject of South America, I concluded that mediation was abandoned. And Great Britain would probably soon be prepared to acknowledge the independence of one or more South American colonies, and we could then act in concert, though not by formal compact. I desired him to write Castlereagh to that effect."

December 14.—Adams proposes to France to recognize the independence of Buenos Ayres.

The President stated in his annual message of this year, November 17, 1818, that from information received from the commissioners who had returned from South America, and from other sources, it appeared that Buenos Ayres and other provinces of South America were practically independent, while some other parts were still in the possession of Spain. As to the question concerning the interference of the allied powers of Europe in the affairs of South America, it appeared, said the president, that resort would not be had to force, and he advised a continuance of the policy thus far pursued by the United States.

Although the European allies decided at the congress of Aix-la-Chapelle to abstain from using force to restore the authority of Spain in South America, they were nevertheless much concerned by the attitude of the United States toward Spain, and by their influence with the Spanish colonies. They

[1] Memoranda of Residence at the Court of London, 330, 354, 358.

feared the effect of recognition of those colonies by the United States.

On January 2d, 1819, says Adams, the president proposed in cabinet meeting to inform Castlereagh that we intended to recognize Buenos Ayres before long. The cabinet was surprised and a discussion followed. Calhoun wished to act only in concert with Great Britain. Adams continues in his diary, May 29, 1819: Politica, the Russian diplomatic agent, "is charged by all the means in his power to promote an amicable arrangement of affairs between the United States and Spain." There was apprehension on the part of the Russian government lest "the government of the United States, yielding to popular clamor, will have recognized the independence of some of the South American colonies before he arrives here." "If not, he has orders to use all his endeavors * * * to dissuade them from such an act of hostility to Spain." Also to use the power of persuasion, "to prevail upon the government of the United States not to associate itself with the European alliance, but to pursue a course of policy in harmony with them, hinting that a contrary course of policy could not be carried into effect, and that the United States, whether willing or not, must follow the impulse of Europe combined." The answer of Adams tersely and plainly intimates that the United States, far from following "the impulse of Europe combined," stood ready to give active aid to the South American colonies in the case of European intervention against them. "I related to him," says Adams, "all that has been done by us concerning the South American question; told him we were convinced that Buenos Ayres at least would maintain her independence of Spain; that sooner or later they must be recognized as an independent power; that we had thought that the time would before now have arrived when they might justly claim this as a right, but from the time when we learnt that the allies had determined, that whatever might be the event of their mediation, not to use force against the South Americans, the president had concluded that we might also forbear to take an immediate, decisive part in their favor."

December 3, 1819.—At the cabinet meeting the president's message was submitted. Adams thought the paragraph on South America was much too strong in their favor. In this

opinion, Adams seemed to be alone; the draft however was modified, and as published it has the same general tone in relation to South America as the two previous messages.[1]

The next day after the above-mentioned cabinet meeting, Hyde de Neuville, the French minister, sounded Adams as to giving a promise to Spain not to recognize the South American colonies unless in concert with France.

The very strained relations between the United States and Spain had been settled by treaty (1819), known subsequently as the Florida Treaty, but the Spanish government had refused to ratify it on account of the known intention of the United States government to recognize the South American colonies. The next year, Nov. 14, 1820, Monroe said in his annual message, after mentioning the progress which the South American colonies had made towards independence, and the favorable effect which the revolution in Spain would have on this, "No facts are known to this government to warrant the belief that any of the powers of Europe will take a part in the contest; whence it may be inferred, considering all circumstances which must have weight in producing the result, that an adjustment will finally take place on the basis proposed by the colonies [Independence]. To promote that result by friendly counsels with other powers, including Spain herself, has been the uniform policy of this government." [2]

March 9, 1821.—Adams' Diary. About the time that Clay carried the resolutions in the House, Adams said to Clay "that the final issue of their (the South Americans') present struggle would be their independence of Spain I had never doubted. That it was our true policy and duty to take no part in the contest was equally clear. The principle of neutrality to all foreign wars was, in my opinion, fundamental to the continuance of our liberties and our Union. So far as they were contending for independence, I wish well to their cause; but I had seen and yet see no prospect that they will establish free or liberal institutions of government." Adams was opposed at this time, to entering into any close political or commercial relations with the Spanish American states, believing that the United States had nothing to gain by such relations. All their

[1] Statesman's Manual, I., 415.

[2] Statesman's Manual, I., 422.

political education, customs, traditions, and religion were totally different from ours. As to commerce "they want none of our productions, and we could afford to purchase very few of theirs."

Adams, with a certain impartiality, wished the Spanish Americans to have a chance, independent of European influence, to work out their own destiny.

Monroe had more of Clay's spirit, but modified by long experience.

Clay had an enthusiastic sympathy for liberty in general and wished to give aid everywhere to the oppressed. He had an exalted idea of the usefulness of the Spanish American states as members of the "American System." The two Americas combined would be a counterpoise against monarchical Europe. In a speech at Lexington in the summer of 1821, he said:—

"Among the motives which always appeared to him to recommend to this country the countenance, by all means short of actual war, that cause (the cause of the South American republics), one, and not the least considerable, was that it would give additional tone, and hope, and countenance to the friends of liberty throughout the world. It was evident after the overthrow of Bonaparte that the alliance, by which that event was unexpectedly brought about, would push the principle of *legitimacy*, a softer and covered name for despotism, to the uttermost extent. Accordingly, the present generation had seen, with painful feeling, congress after congress assembling in Europe to decide without ceremony, the destiny and affairs of foreign independent states. And if we, the greatest offender of all against the principle of legitimacy, had not been brought under their jurisdiction, and subjected to their parental care, we owed the exemption to our distance from Europe and to the known bravery of our countrymen. But who can say, that has observed the giddiness and intoxication of power, how long this exemption will continue? It had seemed to him desirable that a sort of counterpoise to the holy alliance should be found in the two Americas in favor of national independence and liberty, to operate by the force of example and by moral influence; that here a rallying-point and an asylum should exist for freemen and for freedom."

Monroe continued in his second inaugural address, and in his

message of December 3, 1821, to express his sympathy with the Spanish American colonies, and to predict their independence in the near future. And on the 8th of March, 1822, he sent to Congress a special message, recommending the recognition of the Spanish American provinces as independent states.[1] Soon after the reception of this message, both houses passed resolutions favoring recognition, and on May 4, 1822, an act was passed appropriating money for the support of diplomatic agents to "such independent nations on the American continent as the president may deem proper."[2]

In his next annual message, December 3, 1822, the President foreshadows the policy declared the next year and known as the Monroe Doctrine. Mr. Monroe seemed to foresee the order of events which would force the United States to defend themselves against the aggressions of Europe, as Clay had done more than a year before. He recognized the antagonism between the political system represented by the European alliance and that of America, and that they would possibly come into conflict; he would therefore prepare for it. As a link in the chain of ideas which developed into the Monroe Doctrine, the following passage from this message is worth studying:—

"Other objects will likewise claim your attention; because, from the station the United States hold, as a member of the great community of nations, they have rights to maintain, duties to perform, and dangers to encounter. * * *

"A great effort has been made in Spain and Portugal to improve the condition of the people, and it must be very consoling to all benevolent minds to see the extraordinary moderation with which it has been conducted. That it may promote the happiness of both nations is the ardent wish of this whole people, to the expression of which we confine ourselves; for whatever may be the feelings or sentiments which every individual under our government has a right to indulge and express, it is nevertheless a sacred maxim, equally with the government and people, that the destiny of every independent nation, in what relates to such improvements, of right belongs and ought to be left exclusively to themselves.

"Whether we reason from the late wars, or from those menac-

[1] Statesman's Manual, I., 483.

[2] Benton's Debates, VII., 204, 205, 287, 297–309, 319, 320.

ing symptoms which now appear in Europe, it is manifest, that if a convulsion should take place in any of those countries, it will proceed from causes which have no existence and are utterly unknown in these states, in which there is but one order, that of the people, to whom the sovereignty exclusively belongs. Should war break out in any of those countries, who can foretell the extent to which it may be carried, or the desolation which it may spread? Exempt as we are from these causes, our internal tranquillity is secure; and distant as we are from the troubled scene, and faithful to first principles in regard to other powers, we might reasonably presume that we should not be molested by them. This, however, ought not to be calculated upon as certain. Unprovoked injuries are often inflicted, and even the peculiar felicity of our situation might, with some, be a cause for excitement and aggression. The history of the late wars in Europe furnishes a complete demonstration that no system of conduct, however correct in principle, can protect neutral powers from injury from any party; that a defenseless position and distinguished love of peace are the surest invitations to war; and that there is no way to avoid it other than by being always prepared, and willing for a just cause to meet it. If there be a people on the earth whose more special duty it is to be at all times prepared to defend the rights with which they are blessed, and to surpass all others in sustaining the necessary burdens, and in submitting to sacrifices to make such preparations, it is undoubtedly the people of these states.

"In view of the civil wars on the Adriatic and Black Seas; of the symptoms of war in other parts; of the war still going on between Spain and her provinces; and of the system of piracy carried on in the neighboring seas, the reasons for sustaining the attitude we now hold, and for pushing forward all our measures of defense with the utmost vigor, appear to me to acquire new force.

"The United States owe to the world a great example, and, by means thereof, to the cause of liberty and humanity a generous support. They have so far succeeded to the satisfaction of the virtuous and enlightened of every country. There is no reason to doubt that their whole movement by a sacred regard to principle, all our institutions being founded on that basis. The ability to support our own cause, under any trial to which it may be exposed, is the great point on which the public solicitude rests. It has often been charged against free governments that

they have neither the foresight nor the virtue to provide at the proper season for great emergencies ; that their course is improvident and expensive ; that war will always find them unprepared, and whatever may be its calamities, that its terrible warnings will be disregarded and forgotten as soon as peace returns. I have full confidence that this charge, so far as relates to the United States, will be shown to be utterly destitute of truth."[1]

It is evident from the discussions in congress and in the executive councils, during the period from 1817 to 1822, that the Monroe Doctrine was not the creation of a moment; it did not spring into existence all at once in 1823. The idea and the principle had become familiar to the people; and the policy it proclaims was strong in the nation before it was distinctly formulated by Mr. Monroe in his seventh annual message. If the occasion had presented itself at an earlier date—any time indeed after 1817, there is every reason to think that the same stand would have been taken by the government of the United States. From the very first, we see with what interest and anxiety Mr. Monroe and his cabinet watched the proceedings of the European Alliance; and seized upon every rumor of their interference in the affairs of South America. They were determined to prevent this at all hazards. It was evident to American statesmen that England was not in sympathy with the continental powers in their policy of intervention and coercion, and especially in the case of Spanish America. So we find Mr. Monroe proposing to England as early as July, 1818, a co-operation of the two governments to promote the independence of Spanish America. So far indeed from Canning being the first to suggest such co-operation in favor of Spanish America, as has been claimed, we find that the idea was familiar in America six years before Canning suggested it. On October 11, 1817, Niles said in his Register:[2] "It seems understood that some very important matters, in regard to Spain and her colonies, will occupy the attention of the next congress. In our own right and that of oppressed humanity, we might lawfully declare war against Spain, and no doubt should have declared it long since, if we had not been apprehensive of embroiling our-

[1] Statesman's Manual, I., 449. [2] XIII., 99.

selves with the *kings* of other countries, united to defend one another against the people. But we trust that this *unholy* alliance may soon be broken; not because we wish war, but that every nation may freely regulate its own affairs—and as *sovereigns*, declare war and make peace, as to them shall seem just. And this event is certain—that if England would only balance the great European powers, the United States could easily throw in such a weight of strength and influence as immediately to destroy every vestige of Spanish supremacy on the American continent." This was very nearly what took place six years later.

What Canning did in 1823 was to warn our government through Mr. Rush, of the threatened danger from the continental powers.

When it became evident that the French army would soon overcome all resistance in Spain, it became a pressing question what action to take in respect to the Spanish American colonies then in revolt against the mother country. The four allied powers of the continent proposed to meet in a congress to settle a course of policy in this case. When the news of this proceeding came to the ears of Canning, then foreign minister, he cast about for the best means of thwarting the designs of the alliance. Knowing the strong sympathy of the United States for their southern neighbors, and their suspicion and dislike of the principles of the European alliance, he naturally turned to this country for aid.

England had as yet rejected all the overtures of the United States to join them in recognizing the independence of the Spanish Republics. Although anxious to stand well with those republics, and convinced of their ultimate independence of Spain, England was, nevertheless, held back from actual acknowledgment by fear of an open breach and perhaps war, with her continental allies. But now the time had come when her own interests were at stake; her rivals of the continent, and particularly France, were about to establish their authority on the western continent—a danger to British prestige and to British commerce.[1]

At this juncture of affairs, Canning, who had hitherto shown

[1] 8 Knight's England.

no friendship to the United States, suddenly developed an admiration for our early statesmen, and began to shower compliments for them upon the American minister.[1]

On the 16th of August, 1823, he sought an interview with Mr. Rush, the American minister, touching Spanish American affairs. "Mr. Canning asked me," says Rush, "what I thought my government would say to going hand in hand with England in such a policy?" (That of preventing interference by France or the continental powers.) "He did not think that concert of action would become necessary, fully believing that the simple fact of our two countries, being known to hold the same opinion, would by its moral effect, put down the intention on the part of France, if she entertained it. This belief was founded, he said, upon the large share of the maritime power of the world which Great Britain and the United States shared between them, and the consequent influence which the knowledge of their common policy on the question involving such important maritime interest, present and future, could not fail to produce on the rest of the world."

On the 22d of August, Canning wrote to Rush on the same subject:—

"He asks if the moment has not arrived when the two governments might understand each other as to the Spanish American colonies; and if so, whether it would not be expedient for ourselves, and beneficial for all the world, that our principles in regard to them should be clearly settled and avowed? That as to England she had no disguise on the subject.

"1. She conceived the recovery of the colonies by Spain, to be hopeless.

"2. That the question of their recognition as independent states, was one of time and circumstances.

"3. That England was not disposed, however, to throw any impediment in the way of an arrangement between the colonies and the mother country, by amicable negotiations.

"4. That she aimed at the possession of no portion of the colonies for herself.

"5. That she could not see the transfer of them to any other power with indifference.

"That if the United States acceded to such views, a declara-

[1] Rush's Court of London, 1821.

tion to that effect, on their part, concurrently with England, would be the most effectual and least offensive mode of making known their joint disapprobation of contrary projects ; that it would at the same time put an end to all the jealousies of Spain with respect to her remaining colonies, and to the agitation prevailing in the colonies themselves, by showing that England and the United States were determined not to profit by encouraging it. And I am asked, in conclusion, whether I consider, whether the full power which I have lately received from my government would authorize me to enter into negotiations to sign a convention on the above subject ; and if not, if I would exchange with him, as the organ of the British government, ministerial notes in relation to it."

On the 23d of August, Canning wrote from Liverpool, saying that an additional motive had occurred, since his previous note was written, for wishing that the two countries would come to some understanding on the Spanish-American question and be at liberty to announce it to the world. The motive was, that England had received notice, though not such as imposed the necessity of instant action, that, as soon as the military objects in Spain were achieved, a proposal would be made for a congress in Europe, specifically on the affairs of South America. And such a proposal, however dealt with by England, might lead to embarrassing complications.

Rush lost no time in making known to his government these proposals of Canning. But he had to answer to Canning's communication, that in the absence of specific instructions in so important a matter, he was not prepared to act without consulting his government. He was not willing to pledge his government to any policy which might implicate it in the federative system of Europe. And further, he insisted that England should acknowledge the independence of the South American colonies before a joint action with the United States would be possible.

More specifically, Mr. Rush answered Canning on the 23d and 27th of August: " that the United States desired to see the independence of the late Spanish provinces in America permanently maintained; and that they would view as unjust and improper any attempt on the part of the powers of Europe to intrench upon that independence."

And further, that the government of the United States "would regard as alike objectionable any interference whatever in the affairs of Spanish America, unsolicited by the late provinces themselves, and against their will; that it would regard the convening of a congress to deliberate upon their affairs as a measure uncalled for, and indicative of a policy highly unfriendly to the tranquillity of the world; that it could never look with insensibility upon such an exercise of European jurisdiction over communities now of right exempt from it, and entitled to regulate their own concerns unmolested from abroad."[1]

On the 18th and 26th of September, Rush had full conferences with Canning upon Spanish-American affairs. Canning again urged upon Rush the expediency and urgency of co-operative action. Rush finally consented to take such action on his own responsibility on the condition of the immediate recognition of the Spanish-American republics by the government of England. Canning could not promise to take this step; and as he had before intimated, the question was too pressing to admit delay, he would therefore be under the necessity of acting alone.

Canning afterwards represented his overtures to Rush as merely *sounding* the American minister as to his powers, etc. He wrote to Sir William à Court under date of the 31st of December following:—

"While I was yet hesitating what shape to give to the declaration and protest which ultimately was conveyed in my conference with P. de Polignac; and while I was more doubtful as to the effect of that protest and declaration, I sounded Mr. Rush, the American Minister here, as to his powers and disposition, to join us in any step, which we might take, to prevent a hostile enterprise on the part of the European powers against Spanish America. He had no powers; but he would have taken upon himself to join with us, if we would have begun by recognizing the Spanish American states.

"This we could not do, and so we went on without. But I have no doubt that his report to his government of this *sounding* (which he probably represented as an overture) had a great share in producing the explicit declarations of the president."

[1] Rush's Court of London, 383.

It would seem from this statement that Canning was playing a double game; that he was not sincere in his *overtures* to Rush, but only wished to learn, as nearly as possible, the sentiments and probable policy of the United States, in the event of European intervention in Spanish America. Convinced by his interview with Rush that he could count with certainty on the assistance of the United States in the last resort, Canning felt emboldened to beard the continental alliance, or the "Holy Alliance," as the four great powers of the continent were also the chief powers of that alliance.

In the early part of October, Canning sought several interviews with Prince de Polignac (French Ambassador in London), in reference to the question of Spanish America, in which the views and intentions of the two governments were set forth in a "minute of the conversation." Rush in his abstract of this paper, November 26, 1823, says that "England declares that she will recognize the independence of the colonies, *in case France should employ force in aid of their resubjugation:* or, in case Spain herself "*should attempt to put a stop to the trade of Britain with those colonies.*" Nothing is said as to what she would do beyond recognizing their independence. Canning took care to make known the *interest* which the United States had in the question. A preference is expressed for the monarchical form of government in the colonies.

In behalf of France, Polignac "declares that France, like England, considers the recovery of the colonies by Spain as hopeless. That France would not assist Spain in attempting their reconquest, but desired to see the dispute made up by amicable arrangements between the mother country and the colonies."

France like Britain claims no exclusive commercial advantages from the colonies. "It knows not what there is to be *recognized* in the colonies as independent; France regarding all government there as a mockery. It labors to show the necessity of assembling a congress in which England should be a part (which she declines), to bring about the benevolent end of reclaiming those remote regions from their past errors, and making up the dispute between them and the parent state on terms satisfactory to both as the policy worthy of both."[1]

[1] Rush's Court of London, 409.

Although satisfied for the time by these assurances on the part of France, Canning soon had reason to believe that the French government was also playing a double game. A year later he writes to Granville, then become Ambassador at Paris, complaining of the duplicity of the French government. In respect to Spanish-America he says :—

"It was *because* I found that there was no relying on anything that the French government said to us of *their* views and intentions on that subject ; it was *because* I found them holding different language to different powers, that I resorted to publicity, and gave to the world the conference with Prince Polignac ; a disclosure which (I admit) sealed the fate of the question and which must rule all future steps in the progress of it.

"We would, we might, have understood each other on that question at the outset, if France had had the openness (or the courage) to declare with us against a congress. But her object was to keep well with both parties (I mean with the alliance and with us) to take credit with the allies ; to wheedle us into a congress ; and to wheedle us into it by promising to side with us when once fairly *in*. Publication cut the knot of this twisted policy, and from that moment it would have been nonsense to think of confidence between France and us, as to Spanish America."

Now let us turn again to the United States, and see what was there taking place during this eventful summer.

During the spring and summer of the year 1823, Mr. Adams, as secretary of state, had entered into a correspondence with Baron Tuyll, the Russian Minister, in respect to a dispute which had arisen about the ownership of the northwest coast of America. The Emperor of Russia had issued an ukase, September 4, 1821, in which he claimed for Russia the Northwest coast of America as far south as the 51st degree of north latitude. This claim was resisted by the governments of both the United States and England.[1] The spring of 1823 was occupied by Mr. Adams in studying the question, and in searching for arguments with which to disprove the right of the Russian claim, but without arriving at any definite results. Adams believed at that time that we had no valid right to

[1] By separate conventions with the United States (1824) and England (1825), Russia withdrew her claims to the coast south of latitude 54° 40′.

territory north of the 49th parallel; yet he said on the first of July, "I find proof enough to put down the Russian argument, but how shall we answer the Russian cannon?" On the 17th of July Adams was ready to try his newly-found arguments. On that day he had an interview with Baron Tuyll, in which he "told him specially that we should contest the right of Russia to *any* territorial establishment on this continent, and that we should assume distinctly the principle that the American continents are no longer subjects for *any* new European colonial establishments."

A few days later (July 22), in writing to Middleton, American minister to Russia, Adams said, "There can, perhaps, be no better time for saying, frankly and explicitly, to the Russian government, that the future peace of the world, and the interest of Russia herself, cannot be promoted by Russian settlements upon any part of the American continent. With the exception of the British establishments north of the United States, the remainder of both the American continents must henceforth be left to the management of American hands. It cannot possibly be the purpose of Russia to form extensive colonial establishments in America. The new American republics will be as impatient of a Russian neighbor as the United States; and the claim of Russia to territorial possession, extending to the fifty-first parallel of north latitude, is equally incompatible with British pretensions." [1]

On the same day, Adams in writing to Rush, said, that the exclusive rights of Spain to any part of the American continents had ceased, and therefore that portion of the Nookta Sound convention (between Spain and England, 1790), ceding certain rights of navigation and fishing, had been extinguished by the fact of the independence of the South-American nations and of Mexico.

"Those independent nations will possess the rights incident to that condition, and their territories will, of course, be subject to no exclusive right of navigation in their vicinity, or of access to them by any foreign nation.

"A necessary consequence of this state of things will be, that the American continents, henceforth, will no longer be subjects

[1] St. Pap. 5 Foreign Relations, 445.

of colonization. Occupied by civilized independent nations, they will be accessible to Europeans and to each other on that footing alone, and the Pacific Ocean in every part of it will remain open to the navigation of all nations, in like manner with the Atlantic.

"Incidental to the condition of national independence and sovereignty, the rights of anterior navigation of their rivers will belong to each of the American nations within its own territories.

"The application of colonial principles of exclusion, therefore, cannot be admitted by the United States as lawful upon any part of the northwest coast of America, or as belonging to any European nation."[1]

The substance of these statements of Adams formed a part of the President's next annual message.

On the receipt from Rush of Canning's proposal, President Monroe submitted the question to Jefferson and Madison for their opinions. The following are extracts from their letters in reply :—

JEFFERSON TO MONROE.

"MONTICELLO, October 24, 1823.

"The question presented by the letters you have sent me, is the most momentous which has ever been offered to my contemplation since that of independence. That made us a nation, this sets our compass, and points the course which we are to steer through the ocean of time opening on us. And never could we embark on it under circumstances more auspicious. Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe. Our second, never to suffer Europe to intermeddle with cis-Atlantic affairs. America, north and south, has a set of interests distinct from those of Europe, and peculiarly her own. She should therefore have a system of her own, separate and apart from that of Europe. While the last is laboring to become the domicile of despotism, our endeavor should surely be, to make our hemisphere that of freedom. One nation, most of all, could disturb us in this pursuit ; she now offers to lead, aid, and accompany us in it. By acceding to her proposition, we detach her from the band of despots, bring her mighty weight into the scale of free government, and emancipate a continent at

[1] U. S. St. Pap,. 5 Foreign Relations, 447.

one stroke, which might otherwise linger long in doubt and difficulty. Great Britain is the nation which can do us the most harm of any one, or all, on earth; and with her on our side we need not fear the whole world. With her, then, we should most sedulously cherish a cordial friendship; and nothing would tend more to knit our affections, than to be fighting once more, side by side, in the same cause. Not that I would purchase even her amity at the price of taking part in her wars. But the war in which the present proposition might engage us, should that be its consequence, is not her war, but ours. Its object is to introduce and establish the American system, of keeping out of our land all foreign powers, of never permitting those of Europe to intermeddle with the affairs of our nations. It is to maintain our own principle, not to depart from it. And if, to facilitate, we can effect a division in the body of the European powers, and draw over to our side its most powerful member, surely we should do it. But I am clearly of Mr. Canning's opinion, that it will prevent instead of provoking war. With Great Britain withdrawn from their scale, and shifted into that of our two continents, all Europe combined would not undertake such a war. For how would they propose to get at either enemy without superior fleets? Nor is the occasion to be slighted which this proposition offers of declaring our protest against the atrocious violations of the rights of nations, by the interference of any one in the internal affairs of another, so flagitiously begun by Bonaparte, and now continued by the equally lawless alliance, calling itself holy.

"But we have first to ask ourselves a question. Do we wish to acquire to our own confederacy any one or more of the Spanish provinces? I candidly confess that I have ever looked on Cuba as the most interesting addition which could ever be made to our system of States. The control which, with Florida Point, this island would give us over the Gulf of Mexico and the countries and isthmus bordering on it, as well as all those whose waters flow into it, would fill up the measure of our political well-being. Yet, as I am sensible that this can never be obtained, even with her own consent, but by war, and its independence, which is our second interest (and especially its independence of England), can be secured without it, I have no hesitation in abandoning my first wish to future chances, and accepting its independence, with peace and the friendship of England, rather than its association at the expense of war and her enmity." * * * (7 Jefferson's works, 315).

MADISON TO MONROE, OCTOBER 30, 1823.

(3 Madison's Writings, 339.)

"DEAR SIR: I have just received from Mr. Jefferson your letter to him, with the correspondence between Mr. Canning and Mr. Rush, sent for his and my perusal and our opinions on the subject of it.

"From the disclosures of Mr. Canning, it appears, as was otherwise to be inferred, that the success of France against Spain would be followed by an attempt of the holy allies to reduce the revolutionized colonies of the latter to their former dependence.

"The professions we have made to these neighbors, our sympathies with their liberties and independence, the deep interest we have in the most friendly relations with them, and the consequences threatened by a command of their resources by the great powers, confederated against the rights and reforms of which we have given so conspicuous and persuasive an example, all unite in calling for our efforts to defeat the meditated crusade. It is particularly fortunate that the policy of Great Britain, though guided by calculations different from ours, has presented a co-operation for an object the same with ours. With that co-operation we have nothing to fear from the rest of Europe, and with it the best assurance of success to our laudable views. There ought not, therefore, to be any backwardness, I think, in meeting her in the way she has proposed, keeping in view, of course, the spirit and forms of the Constitution in every step taken in the road to war, which must be the last step if those short of war should be without avail." * * *

The first intimation that Adams gives in his diary of the reception of Canning's proposals to Rush, is under the date of November 7, 1823. A cabinet meeting was called to discuss the matter. "There was much conversation, without coming to any definite point. The object of Canning, Adams writes, appears to have been to obtain some public pledge from the government of the United States, ostensibly against the forcible interference of the Holy Alliance between Spain and South America; but really or especially against the acquisition to the United States themselves of any part of the Spanish-American possessions."

Calhoun was inclined to giving a discretionary power to

Rush, to join in a declaration against the interference of the Holy Allies. Adams and Southard objected to this.

"The president was averse to any course which should have the appearance of taking a position subordinate to that of Great Britain, and suggested the idea of sending a special minister to *protest* against the interposition of the Holy Alliance."

Adams thought it was a question for separate consideration, whether we ought in any event, if invited, to attend at a congress of the allies on this subject.

Calhoun thought we ought in no case to attend.

"The president, referring to instructions given before the congress of Aix-la-Chapelle, declaring that we would, if invited, attend no meeting relative to South America, of which less than its entire independence should be the object, intimated that a similar limitation might be assumed now."

Adams objected that the case was different then. We had now recognized the Spanish-American states, therefore the same limitation would be useless. The president assented to this.

"I remarked that the communications recently received from the Russian minister, Baron Tuyll, afforded, as I thought, a very suitable and convenient opportunity for us to take our stand against the Holy Alliance, and at the same time to decline the overture of Great Britain. It would be more candid, as well as more dignified, to avow our principles explicitly to Russia and France, than to come in as a cock-boat in the wake of the British man-of-war.

"This idea was acquiesced in all sides, and my draft for an answer to Baron Tuyll's note announcing the emperor's determination to refuse receiving any minister from the South-American governments was read."

"Mr. Calhoun objected to two words as sarcastic—the word '*Christian*' annexed to independent nations, and the words '*of peace*' added to the word minister."

"I told him, laughing, that all the point of my note was in those two words, as my object was to put the Emperor in the wrong in the face of the world as much as possible.

"It was thought the best method of making the profession of our principles would be in answering that part of Baron Tuyll's communication to me which was verbal—the intimation of the Emperor's hope, that we should continue to observe

neutrality in the contest between Spain and South America. * * * The discussion continued till four o'clock, when Mr. Calhoun had an engagement, and the meeting broke up without coming to any conclusion.

"I remained with the President, and observed to him that the answer to be given to Baron Tuyll, the instructions to Mr. Rush relative to the proposals of Mr. Canning, those to Mr. Middleton at St. Petersburg, and those to the minister who must be sent to France, must all be parts of a combined system of policy and adapted to each other; in which he fully concurred."

Adams proposed to tell Baron Tuyll that "receiving in friendly part the expression of the Emperor's wish that the United States may continue to observe the neutrality announced on their recognition of the South American governments, he wished the Baron to state to his government, in return, the desire of that of the United States that the Emperor, on his part, should continue to observe the same neutrality.

"The discussion at the cabinet meeting took a wide range. * * *

"I observed that I was rather glad of the objection of the British government to the *preliminary* recognition, as I should be sorry that we should be *committed* upon Canning's propositions, even so far as we might have been, by Mr. Rush on his own responsibility.

"Calhoun wondered what could be the objection of Great Britain to recognition.

"I said there were two reasons; one, the aversion to fly directly in the face of the Holy Alliance; and, secondly, the engagements of her treaties with Spain, particularly that of 5th July, 1814.

"Calhoun and Southard thought that Great Britain would, in no event, take a stand against the Holy Alliance on South American affairs unless sure of our co-operation. She could not be belligerent, leaving us neutral, because it must throw the whole commerce of the adverse party into our hands. It was the opinion of us all that a minister must immediately be sent to France."

November 13.—"Morning occupied in making a draft of

minutes for the message of the President upon subjects under the direction of the department of state."

Adams then goes to see the President, and continues: "I find him yet altogether unsettled in his own mind as to the answer to be given to Mr. Canning's proposals, and alarmed far beyond anything that I could have conceived possible, with the fear that the Holy Alliance are about to restore immediately all South America to Spain. Calhoun stimulates the panic, and the news that Cadiz has surrendered to the French has so affected the President that he appeared entirely to despair of the cause of South America.* * * We discussed the proposals of Canning, and I told him if he would decide either to accept or decline them, I would draft a dispatch conformably to either decision for his consideration. He said he would talk further about it to-morrow."

November 15.—"The President showed Adams letters which he had received from Jefferson and Madison, in answer to his request for their opinions in regard to Canning's proposals.

Later this same day there was a cabinet meeting, at which the discussion of Canning's proposal was renewed. "I soon found," says Adams, "the source of the President's despondency with regard to South American affairs. Calhoun is perfectly moon-struck by the surrender of Cadiz, and says the Holy Allies, with ten thousand men, will restore all Mexico and all South America to the Spanish dominion."

Adams scouted this idea, and added that if the South Americans were so feeble, we should do well not to ally ourselves with them. Calhoun again reverted to his idea of giving our minister discretionary power to accede to all Canning's proposals, if necessary and not otherwise.

"After much discussion," continues Adams, "I said I thought we should bring the whole answer to Mr. Canning's proposals to a test of right and wrong. Considering the South Americans as independent nations, they themselves and no other nation had the *right* to dispose of their condition. * * * This principle will give us a clue to answer all Mr. Canning's questions with candor and confidence, and I am to draft a dispatch accordingly."

November 16.—Further dispatches from Rush, from which it seems that "Mr. Canning's tone appears to be changed, and Mr.

Rush writes under feelings of disappointment, and having partly discovered the views of Great Britain."

November 17.—"I drafted a dispatch to R. Rush in answer to all his dispatches relating to the proposals of G. Canning concerning South America.

"The President thinks from the tenor of the dispatches received yesterday from R. Rush that Canning had changed his purpose; that he was less alarmed; that probably some inducements, had been presented, after the triumphs of the French in Spain, to quiet his apprehensions. My own opinion is confirmed that the alarm was affected; that the object was to obtain by a sudden movement a premature commitment of the American government against any transfer of the island of Cuba to France, or the acquisition of it by ourselves; and, failing in that point, he has returned to the old standard of British belligerent policy."

Later in the day Mr. Addington (English Chargé d' Affaires) called upon Adams, and told him he had received news confirming the report that England had sent consular agents to the South American governments. Adams told Addington he could not imagine what could withhold Great Britain from the formal recognition, when her measures all implied that it had been given; and he added that, earnestly desirous as we were of co-operating with Great Britain, he saw no other basis for concerted operations than that. On another day Adams explained to Addington, "that we could move in concert with Great Britain upon South American affairs only upon the basis of their acknowledged independence."

Same day.—Baron Tuyll came and read extracts from dispatches from Count Nesselrode to him. One of these "was an exposition of principles relating to the affairs of Spain and Portugal, in a tone of passionate exultation at the counter-revolution in Portugal and the impending success of the French army in Spain; an 'Io Triomphe' over the fallen cause of revolution, with sturdy promises of determination to keep it down; disclaimers of all intention of making conquests; bitter complaints of being calumniated, and one paragraph of compunctions, acknowledging that an apology is yet due to mankind for the invasion of Spain, which it is in the power only of Ferdinand to furnish by making his people happy.

"This paragraph is a satire upon all the rest of the paper."

November 18.—It was reported to Adams by G. Hoy, that the President appeared to be much relieved by the view he (Adams) had taken of Rush's last dispatches. Adams thought the President was still alarmed more than would appear to be necessary. At a meeting at the President's, Calhoun said he was confirmed in the view he had taken of the designs of the Holy Allies upon South America. Adams said he was quite confirmed in his. "The President appears to be in an extraordinary degree of dejection. There must be something that affects him besides the European news."

November 20.—"At the office, I received a note from the President, proposing large alterations to my draft of instructions to R. Rush upon Canning's proposals concerning South American affairs. Some of the alterations were unexceptionable, others I wished him further to consider.* * * I stated my objections to some of his proposed alterations of my draft, and suggested to him the substance of a substitute which I wished to offer to his projected paragraph. He agreed that I should draft a substitute, and proposed a meeting of the Administration to-morrow. He had adopted Mr. Calhoun's idea of giving Mr. Rush a discretionary power to act jointly with the British government in case of any sudden emergency of danger, of which they and he should judge. I am utterly averse to this; and I told him that I thought the instructions should be explicit, authorizing him distinctly to act in specified contingencies, and requiring him in all others to refer for every important measure to his government."

November 21.—At a cabinet meeting there was a long discussion upon the proposed instructions to Rush. Calhoun objected to nearly all the President's amendments, and preferred Adams' substitute. "The President did not insist upon any of his amendments which were not admitted by general consent, and the final paper, though considerably varied from my original draft, will be conformable to my own views. The supplementary instruction I had not finished, but read the part that I had prepared.

"I mentioned also my wish to prepare a paper to be delivered confidentially to Baron Tuyll, and the substance of which I would in the first instance express to him in a verbal confer-

ence. I would refer to the verbal communications recently made by him, and to the sentiments and dispositions manifested in the extract of a dispatch relating to Spanish affairs which he lately put into my hands. My purpose would be in a moderate and conciliatory manner, but with a firm and determined spirit, to declare our dissent from the principles avowed in those communications, to assert those upon which our own government is founded, and while disclaiming all intention of attempting to propagate them by force, and all interference in the political affairs of Europe, to declare our expectation and hope that the European powers will equally abstain from the attempt to spread their principles in the American hemisphere, or to subjugate by force any part of these continents to their will.

"The President approved of this idea; and then taking up the sketches that he had prepared for his message, read them to us. Its introduction was in a tone of deep solemnity and of high alarm, intimating that this country is menaced by imminent and formidable dangers, such as would probably soon call for their most vigorous energies and the closest union. It then proceeded to speak of the foreign affairs, chiefly according to the sketch I had given him some days since, but with occasional variations. It then alluded to the recent events in Spain and Portugal, speaking in terms of the most pointed reprobation of the late invasion of Spain by France. It also contained a broad acknowledgment of the Greeks as an independent nation and a recommendation to congress to make an appropriation for sending a minister to them.

"Of all this Mr. Calhoun declared his approbation. I expressed as freely my wish that the President would reconsider the whole subject before he should determine to take that course. I said the tone of the introduction I apprehended would take the nation by surprise and greatly alarm them. It would come upon them like a clap of thunder." Adams goes on to say that the country was in a state of profound peace and quiet, with no foreign complications; that this message would be a summons to arms—to arms against all Europe. It would be as new as surprising in our policy. It would have the air of open defiance of all Europe, and I should not be surprised if the first answer to it from Spain and France, and

even Russia, should be to break off their diplomatic intercourse with us. He did not expect that the quiet which we had enjoyed for six or seven years would last much longer. The aspect of things was portentous; but if we must come to an issue with Europe, let us keep it off as long as possible. Let us use all possible means to carry the opinion of the nation with us, and the opinion of the world.

Calhoun thought there was not the tranquillity that Adams spoke of; that there was great anxiety in the thinking part of the nation; that there was a general expectation that the Holy Alliance would employ force against South America, and that it would be proper that the President should sound the alarm to the nation. A time was approaching when all its energies would be needed, and the public mind ought to be prepared for it.

"The President told us confidentially that G. W. Erving,[1] had written * * * that we might set it down for certain that France and the allies would support Spain in the attempt to recover her colonies by force."

"I observed to the President that I put very little reliance on anything written by G. W. Erving." He knew nothing about the matter more than was known to the world.

"Mr. Southard said little, but inclined towards my view of the subject."

"The President finally said that he would draw up two sketches for consideration, conformable to the two different aspects of the subject." The President and Calhoun thought there was a material difference in the wars and revolutions which since the year 1789 to this time have been raging in Europe, and this last invasion of Spain by France; "that this was a more direct attack upon the popular principle; and that although no former message ever censured those overthrows and conquests before, yet it might be very proper to censure this now. The question, however, is deferred."

November 22.—Adams being with the President, urged him again, "to abstain from everything in his message which the Holy Allies could make a pretext for construing into aggression upon them." If the Holy Allies, said Adams, were determined

[1] United States Minister to Spain, 1814, 1816–19.

to make up an issue with us, it was our policy to meet, and not make it. We should retreat to the wall before taking to arms, and be sure at every step to put them as much as possible in the wrong. "I said if the Holy Alliance really intended to restore by force the colonies of Spain to her dominion, it was questionable to me whether we had not, after all, been overhasty in acknowledging the South American independence. It had pledged us now to take ground which we had not felt at all bound to take five years ago. At the congress of Aix-la-Chapelle the allies had discussed what they should do with South America, and we had not even thought of interfering with them. If they intend now to interpose by force, we shall have as much as we can do to prevent them, without going to bid them defiance in the heart of Europe." The ground that Adams wished to take was "that of earnest remonstrance against the interference of the European powers by force with South America, but to disclaim all interference on our part with Europe; to make an American cause, and adhere inflexibly to that."

"The President said he had spoken of the Greeks and of the Spaniards in his last year's message. I said I should not object to paragraphs of a like description, in general terms and pledging nothing, but I would be specially careful to avoid anything which may be construed as hostility to the allies. He said he would fully consider what he would say, and when prepared with his draft would call a meeting of the members of the administration."

November 24.—"Mr. Gallatin was here, and talked much upon the topics to be touched upon in the President's message. His views coincide entirely with those I have so earnestly urged upon the President, excepting as to the Greeks. * * * I told Gallatin that I wished he would talk to the President as he had done to me, upon everything except the Greeks."

Later, the same day, Adams called upon the President and found Gallatin with him. After Gallatin had withdrawn, the President read to Adams his paragraphs respecting the Greeks, Spain, Portugal, and South America. "I thought them," says Adams, "quite unexceptionable and drawn up altogether in the spirit that I had so urgently pressed on Friday and Saturday. I was highly gratified at the change,

and only hope the President will adhere to his present views."

November 25.—Adams proposed in cabinet meeting to send to Baron Tuyll a paper he had prepared in answer to the Russian dispatches. He continues: "The paper itself was drawn to correspond exactly with a paragraph of the President's message which he had read me yesterday, and which was entirely conformable to the system of policy which I have earnestly recommended for this emergency. It was also intended as a firm, spirited, and yet conciliatory answer to all the communications lately received from the Russian government, and at the same time an unequivocal answer to the proposals made by Canning to Rush. It was meant also to be eventually an exposition of the principles of this government, and a brief development of its political system as henceforth to be maintained: essentially republican—maintaining its own independence, and respecting that of others; essentially pacific—studiously avoiding all involvement in the combinations of European politics, cultivating peace and friendship with the most absolute monarchies, highly appreciating and anxiously desirous of retaining that of the Emperor Alexander, but declaring that, having recognized the independence of the South American states, we could not see with indifference any attempt by European powers by forcible interposition either to restore the Spanish dominion on the American continents or to introduce monarchical principles into those countries, or to transfer any portion of the ancient or present American possessions of Spain to any other European power."

The paper in question having been read, Calhoun questioned the advisability of delivering any such paper to the Russian minister. He thought the paper contained rather an ostentatious display of republican principles, which would perhaps be offensive to Russia and even England, besides making up perhaps too soon, an issue with the Holy Alliance. He thought it would be sufficient to communicate to Baron Tuyll a copy of the paragraph of the President's message to which this paper was adapted. This was a communication to our own people, and would not, therefore, be so likely to give offense to foreign powers. Southard and West observed that Adams' paper was merely an answer to what Russia and the Holy Alliance had

said to us of the virtues and glories of despotism. Calhoun thought my paper went further than theirs. Adams said that a copy of that paragraph of the President's message might suffice for an indication of our principles; he thought it was due however to the honor and dignity of the nation that an explicit and direct answer should be given to the communications of the Russian government. Upon this idea he argues at length.

"Calhoun's objections were not supported; but Mr. Wirt made a question far more important, and which I had made at an earlier stage of these deliberations. It was whether we shall be warranted in taking so broadly the ground of resistance to the interposition of the Holy Alliance by force to restore the Spanish dominion in South America. It is, and has been, to me a fearful question. Wirt remarked upon the danger of assuming the attitude of menace without meaning to strike, and asked, if the Holy Allies *should* act in direct hostility against South America, whether this country would oppose them by war?

"My paper and the paragraph would certainly commit us as far as the Executive constitutionally could act on this point; and if we take this course, I should wish that a joint resolution of the two houses of congress should be proposed and adopted to the same purport."

The President did not finally decide upon the point of Calhoun's objection to the delivery of *any* paper to Baron Tuyll.

"Mr. Wirt objected strongly to one paragraph of my draft, which, he said, was a hornet of a paragraph, and he thought would be excessively offensive.

"I said it was the cream of my paper; but I am sure the President will not suffer it to pass."

The President feared the republicanism of the paper might indispose the British government to act in concert with us. Their sympathies, he said, were with the Holy Allies; and it was only the necessities of their commerce and revenue, with the pressure of their debts and taxes, which compelled them to side with South American independence for the sake of South American trade. If we should shock and alarm them, and the Holy Allies could hold out to them anything to appease the craving of their commercial and fiscal interest, they might go back to the allies—as Portugal has gone back—insignificant and

despised, but leaving us in the lurch, with all Europe against us."

Adams replied that, nothing "we should now do would commit us to absolute war; that Great Britain was already committed more than we." Adams further said that the interest of no one of the allied powers would be promoted by the restoration of South America to Spain. That the only bait they could offer Great Britain for acceding to it was Cuba, and neither Spain nor the allied powers would consent to that. "My reliance upon the co-operation of Great Britain rested not upon her principles, but her interest. My paper came in conflict with no principle which she would dare to maintain. We avowed republicanism, but we disdained propagandism; we asserted national independence, to which she was already fully pledged. We disavowed all interference with European affairs, and my whole paper was drawn up to come in conclusion precisely to the identical declaration of Mr. Canning himself, and to express our concurrence with it.

"Mr. Southard and Mr. Wirt supported me in these remarks."

November 26.—At an adjourned meeting of the cabinet the above discussion was renewed.

Adams reviewed the preceding transactions of the cabinet meetings and again objected to the draft of the President's message, that it was too much in the tone of alarm; that it contained strong and pointed censure of France and the Holy Allies for the invasion of Spain; and that it recommended an appropriation for a minister to Greece, and virtually recognized her independence. Adams thought, that if an issue must be joined with the Holy Alliance, it ought to be upon grounds exclusively American; "that we should separate it from all European concerns, disclaim all intention of interfering with these, and make the stand altogether for an American cause; and that at the same time the answer to be given to the Russian communications should be used as the means of answering also the proposals of Mr. George Canning, and of assuming the attitude to be maintained by the United States with reference to the designs of the Holy Alliance upon South America." Taking this view of it, Adams said that all the papers now drawn up were but various parts of one system; and it appeared to him that the only important question to be determined was

that raised by Wirt, whether they ought at all to take this attitude as regards South America, and in opposition to the Holy Alliance. He thought this stand should be taken, but with a full and serious estimate of the consequences.

Wirt said he did not think this country would support the government in a war for the independence of South America. Some of the people had felt a warm sympathy for the South Americans, but it never had been general, and never had there been a moment when the people thought of supporting them by war. To menace without intending to strike was neither consistent with the honor nor the dignity of the country. It was possible, he said, that Canning's proposals were traps to ensnare us into declarations against the Holy Allies. If we were to be thus committed, the documents ought to be communicated to congress, and before the honor of the nation was pledged, the sense of the country should be taken.

Calhoun supported the other view of the question. He said the great object was to detach Great Britain from the Holy Alliance. Great Britain could not resist them alone if we remained neutral. The result would be that the South Americans would be subdued; and the next step of the Allies would be against ourselves. By taking the stand now the Allies would probably be deterred from interposition in South America; but if not we ought to sustain the ground now taken, even to the extent of war. He thought the people would sustain the government in such a measure if the exigency should arise. He objected, however, to Adams' answer to the Russian minister as needlessly aggravating and offensive to the Holy Allies and to England.

Adams thought that if the Allies interfered in South America and Mexico, it would not be to restore the authority of Spain, which would never again be able to maintain her dominion. Eventually the country would be divided up among the Allies. Russia might take California, Peru, and Chili; France, Mexico; Great Britain, Cuba. Then what would be our situation? The danger was at our own doors, and we could not too soon take our stand to repel it.

There was another view which the President had suggested. That is in the case that the Allies should attack South America, and Great Britain should resist them alone. Adams thought

this not a improbable contingency; and he believed, in such a struggle, Great Britain, on account of her command of the sea would be victorious. The result would be that the colonies protected by Great Britain alone would become her colonies instead of those of Spain. He thought, therefore, they should act promptly and decisively.

Adams again pleaded warmly in favor of his paper in answer to Baron Tuyll. It was, he concluded, the answer at once to Russia and Great Britain. Southard and Wirt were inclined to accept the paper except in some details, but Calhoun still opposed it.

The next day, November 27th, the President sent Adams a [illegible] against the controverted paragraphs in his answer to Baron Tuyll. Adams therefore very reluctantly left them out of his final draft.[1]

The difference of opinion shown in the cabinet upon the answer to the Emperor of Russia and the draft of the President's [illegible] was more one of method than of principle. In [illegible] with Russia, Adams would seem [illegible] to pay the Emperor back in some [illegible] an ostentatious display of [illegible] of Adams' own most cutting [illegible] a pretext for [illegible] with Euro- [illegible] the less [illegible]

[illegible] Here direct [illegible] Adams [illegible] described by Adams [illegible] Adams had [illegible] expressions [illegible]

the Greeks, but no direct censure of the Allies. As to American matters, a bold and decisive stand was taken against any interference by the powers of Europe on the western continents.

The paragraphs of the message sent to Congress, December 2d, 1823, which declared the principles which have gone under the name of the Monroe Doctrine, were as follows:—

"1. At the proposal of the Russian imperial government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg, to arrange, by amicable negotiation, the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal had been made by his imperial majesty to the government of Great Britain, which has likewise been acceded to. The government of the United States has been desirous, by this friendly proceeding, of manifesting the great value which they have invariably attached to the friendship of the Emperor, and their solicitude to cultivate the best understanding with his government. In the discussions to which this interest has given rise, and in the arrangements by which they may terminate, the occasion has been adjudged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.

"2. It was stated, at the commencement of the last session, that a great effort was then making in Spain and Portugal, to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the result has been, so far, very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced, that we resent injuries or make

preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments. And to the defense of our own, which has been achieved by the loss of so much blood and treasure and material, by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor, and to the amicable relations existing between the United States and those powers, to declare, that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered, and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new governments and Spain, we declared our neutrality at the time of their recognition, and this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this government, shall make a corresponding change on the part of the United States indispensable to their security.

"The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced, than that the allied powers should have thought it proper, on a principle satisfactory to themselves, to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question to which all independent powers, whose governments differ from theirs, are interested; even those most remote, and surely none more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal con-

cerns of any of its powers ; to consider the government *de facto*, as the legitimate government for us ; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy ; meeting, in all instances, the just claims of every power, submitting to injuries from none. But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness ; nor can any one believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference. If we look to the comparative strength and resources of Spain and those new governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course." [1]

Extended quotation from the diary of J. Q. Adams has been made, because it is believed that nowhere else is so well shown the Monroe Doctrine in its process of formation. Here are exhibited from day to day the hopes, the fears, and the wishes of the men who were called to act for the nation in the emergency which had arisen ; and we are able to discern therein the motives which actuated them in their final decision.

Although the principles of this Doctrine had originated at an earlier period, and had been of slow growth, yet they were now, for the first time, distinctly formulated and officially set forth by the executive department of the government. And here it will be readily seen that the secretary of state, Mr. Adams, exercised a considerable influence in giving final shape to the declaration of those principles.

While taking a stand against the interference of the Allies in South America, independent of England, the message goes further, and skilfully draws the line between the two hemispheres, thus excluding England—our would-be ally—as well as the continental powers from new colonization on the western continents.

In the light of present knowledge, one can hardly subscribe

[1] Statesman's Manual, I., 452, 460; State Papers, V. Foreign Affairs, 245–50.

to Mr. Sumner's assertion, that "The Monroe Doctrine proceeded from Canning," and that "he was its inventor, promoter, and champion, at least so far as it bears against European intervention in American affairs." And again, "at last, after much discussion in the cabinet at Washington, President Monroe, accepting the lead of Mr. Canning, and with the counsel of John Quincy Adams, put forth this famous doctrine." [1]

And Canning said, in 1826, in explaining the reason why he did not prevent the occupation of Spain by France, "I looked another way. I sought for compensation in another hemisphere. Contemplating Spain, such as our ancestors had known her, I resolved that, if France had Spain, it should not be Spain 'with the Indies.' *I called the New World into existence to redress the balance of the Old.*" [2]

The historical truth would seem to be, that Canning not only had little, if any, influence in the formation of the Monroe Doctrine, but that he had as little in "calling the new world into existence." We have seen how the Munroe Doctrine originated; as to the independence of South America and Mexico, what are the facts? As late as the autumn of 1823, Mr. Canning was willing to see the Spanish-Americans restored to the dominion of Spain, if this could be done by the efforts of Spain herself. But this he knew was impossible; the colonies had been, with one or two exceptions, practically independent for many years. The United States had acknowledged their independence and had established diplomatic intercourse with them. The English government waited more than two years before adopting a like policy.[3] And then the final step was taken, or at least hastened by a jealousy of the United States. It was feared that they would acquire an authority and a commercial advantage by reason of their intimate relations with the Spanish-Americans.[4] Lord Liverpool wrote to Wellington, December 8, 1824, "If we allow these new states to con-

[1] Prophetic voices concerning America, pp. 157, 158.

[2] Canning's Speech, 12th December, 1826.

[3] The 2d of July, 1824, the English government came to a determination to recognize Buenos Ayres. The decision in respect to Mexico and Columbia was taken in the following December.

[4] Stapleton's Political Life of Canning, II., 69.

solidate their system and their policy with the United States of America, it will in a few years prove fatal to our greatness, if not endanger our safety." [1]

There is no desire to underrate the importance of Canning's part in thwarting the designs of the "Holy Alliance;" but that was a European, rather than an American triumph. He freed England from her entanglement with the European Alliance, and discredited its policy in Europe; but to do this he sought and obtained the indirect aid of the United States. It is not at all certain that Canning could have prevented the independence of the Spanish-American states, without, at least, having taken an active part against them.

The opposition in parliament gave full credit to Mr. Monroe's message. Brougham said:

"The question with regard to South America is now disposed of, or nearly so; for an event has recently happened, than which no event has ever dispersed greater joy, exultation, and gratitude, over all the freemen of Europe; that event which is decisive on the subject, is the language held with respect to Spanish America, in the speech or message of the President of the United States to the congress." [2]

"When the message arrived in London," says Rush, "the whole document excited great attention. Spanish-American securities rose in the stock market, and the safety of the new states from all European coercion was considered as no longer doubtful." And, in fact, they were safe from molestation by the European Alliance, and all became eventually independent states.

In his next annual message, Dec. 7, 1824, President Monroe again referred to Spanish-American affairs in much the same tone as in his previous messages. "It is impossible," he said, "for the European governments to interfere in their concerns, especially in those alluded to which are vital, without affecting us; indeed, the motive which might induce such interference in the present state of the war between the parties, if a war it may be called, would appear to be equally applicable to us. It is gratifying to know that some of the powers with whom we

[1] Life of Lord Liverpool, III., 305.
[2] Stapleton, Pol. Life of Canning, II.

other, and to repel, in common, every attack or invasion which may in any manner threaten their existence." After making various more explicit stipulations, and providing for a joint assembly of the representatives of the two states, Article 13 continues: "Both parties oblige themselves to interpose their good offices with the governments of the other states of America, *formerly Spanish*, to enter into this compact of union, league, and confederation."

ARTICLE 14. "As soon as this great and important object has been attained, a general assembly of the American states shall be convened, composed of their plenipotentiaries, with the charge of cementing, in the most solid and stable manner, the intimate relations which ought to exist between all and every one of them, and which may serve as a council in the great conflicts, as a rallying-point in the common dangers, as a faithful interpreter of their public treaties when difficulties occur, and as an umpire and conciliator in their disputes and differences."

It is stipulated by Article 16, that the national sovereignty of the individual states shall in nowise be impaired by the establishment of the league.

Treaties of alliance of similar import were contracted by Colombia with Peru, July 6, 1822; with Guatemala, March, 15, 1825; with Mexico, October, 31 1823; with Buenos Ayres, June 10, 1823. In these last-named treaties, there is the further suggestion of Panama as a convenient place of meeting for the proposed congress.

The object not only of these special treaties, but also of the proposed general alliance is here made plain. It is to present a united front to the hostile forces of Spain in the war still continuing in some of the South American states, or to those of the European alliance, or any other state which might interfere in the war in favor of Spain.

The stipulations in these treaties referring to a general congress make no mention of the United States; it is the "former" or "ci-devant" Spanish provinces of America. The origin of the idea of inviting the United States does not definitely appear. Mr. Theodore Lyman [1] states that the scheme was suggested as

[1] Diplomacy of the United States, II., 467.

early as 1819, during the residence of the first American commissioners in South America. The commissioners make no mention of it in their report. The first direct intimation of this fact which seems to have come to the knowledge of the government of the United States is noticed in a correspondence of the secretary of state, J. Q. Adams, with certain diplomatic agents of the United States in South America. In a letter dated the 17th of May, 1823, to Cæsar A. Rodney, minister plenipotentiary to Buenos Ayers, Mr. Adams says that he has news from Mr. Forbes at Buenos Ayres, of the project of the alliances between Colombia and the other Spanish-American states, and also of the proposed general congress of all those states. And by letters of a previous date, received from Mr. Prevost, it appears that the project is still more extensive.

"It embraces North as well as South America, and a formal proposal to join and take the lead in it is to be made known to the government of the United States."

"Intimations of the same design have been given to Mr. Todd at Bogota. It will be time for this government to deliberate concerning it when it shall be presented in a more definite and specific form. At present it indicates more distinctly a purpose on the part of the Colombian republic to assume a leading character in this hemisphere than any practical object of utility which can be discerned by us. With relation to Europe, there is perceived to be only one object in which the interests and wishes of the United States can be the same as those of the southern American nations, and that is, that they should all be governed by republican institutions, politically and commercially independent of Europe. For any confederation of Spanish-American provinces for that end the United States would yield their approbation and cordial good wishes. If more should be asked of them, the proposition will be received and considered in a friendly spirit, and with a due sense of its importance."[1]

Nothing further is heard of the matter till the spring of the year 1825. Soon after Clay became secretary of state, the ministers of Colombia and Mexico, at Washington, sought informal interviews with him to ascertain whether it would be

[1] U. S. St. Pap., F. R., V., 918; see also Letter of Adams to Anderson, May 27, 1823, Ib. 804.

agreeable to the government of the United States to receive an invitation from the governments they represented, to send delegates to the proposed congress at Panama. Upon learning these facts, Mr. Adams, now become President, directed Mr. Clay to say:

"That of course the United States could not make themselves a party to the existing war with Spain. The President believed such a congress as was proposed might be highly useful in settling several important disputed questions of public law, and in arranging other matters of deep interest to the American continent, and strengthening the friendship and amicable intercourse between the American powers; but, before such a congress assembled, certain conditions should be complied with, namely, the fixing of the subjects to be discussed at the congress, the powers to be given to the commissioners, and the mode of organising the congress." [1]

Accordingly some months later formal notes of invitations were sent to the secretary of state by the aforesaid ministers. That of Mr. Salazar, the Colombian minister, is dated the 2d of November, 1825. Unable, he says, to give a minute enumeration of the subjects to be discussed at the congress, he will however by the instruction of his government suggest some that will form useful matter for discussion. These constitute two classes.

1. Matters peculiarly and exclusively concerning the belligerents.

2. Matters between the belligerents and neutrals. The United States would not be expected, he said, to take part in the discussion of subjects of the first class. But a most opportune occasion would be afforded at Panama, "to the United States to fix some principles of international law, the unsettled state of which has caused much evil to humanity." Also, "the manner in which all colonisation of European powers on the American continent shall be resisted, and their interference in the present contest between Spain and her former colonies prevented, are other points of great interest." An eventual alliance is suggested, to have effect in the case of the above-mentioned events taking place. "This is a matter of immediate

[1] U. S. St., Pap., F. R., V., 835.

utility to the American states that are at war with Spain, and is in accordance with the repeated declarations and protests of the cabinet at Washington." The means for the abolition of the slave trade was another subject suggested.

What should be the basis of the relations of Hayti and "of other parts of our hemisphere that shall hereafter be in like circumstances," was also expected to be settled at the congress.

The representatives of Colombia, Peru, Guatemala, and Mexico, were, it was presumed, already assembled at Panama, and at work upon the preliminaries of organisation and subjects of discussion.[1]

The note of the Mexican minister, Mr. Obregon, dated the 3d of November, is of similar purport, except that the question of the slave-trade and of Hayti are not mentioned. The two principal questions, in Mr. Obregon's opinion, were, the "resistance or opposition to the interference of any neutral nation in the question and war of independence between the new powers of the continent and Spain." And second, "The opposition to colonisation in America by the European powers."[2]

Mr. Canas, envoy from the Federation of Central America, or Guatemala, also extended an invitation in the name of that Republic.

The objects of the proposed congress, as understood by the Spanish-Americans, are fully set forth in an article in the "Gaceta" de Colombia of February 27, 1825, as follows:—

"1. To form a solemn compact, a league, by which the states, whose representatives are present, will be bound to unite in prosecuting the war against their common enemy, Old Spain, or against any other power, which shall assist Spain in her hostile designs, or any otherwise assume the attitude of an enemy.

"2. To draw up and publish a manifesto, setting forth to the world the justice of their cause, and the relations they desire to hold with other Christian powers.

"3. To form a convention of navigation and commerce, applicable both to the confederated states, and to their allies.

"4. To consider the expediency of combining the forces of the republics, to free the islands of Porto Rico and Cuba from the

[1] U. S. St., Pap., F. R., V., 836.

[2] Ib., 838.

yoke of Spain, and in such case, what contingent each ought to contribute for this end.

"5. To take measures for joining in a prosecution of the war at sea, and on the coasts of Spain.

"6. To determine whether these measures shall also be extended to the Canary and Philippine islands.

"7. To take into consideration the means of making effectual the declaration of the President of the United States, respecting any ulterior design of a foreign power to colonise any portion of this continent, and also the means of resisting all interference from abroad with the domestic concerns of the American governments.

"8. To settle by common consent the principles of those rights of nations, which are in their nature controvertible.

"9. To determine on what footing shall be placed the political and commercial relations of those portions of our hemisphere which have obtained or shall obtain their independence, but whose independence has not been recognized by any American or European power, as was for many years the case with Hayti." [1]

Clay, in his answers to these invitations, November 30, tells Salazar and Obregon that they had not, in their notes of invitation, complied wholly with the conditions upon which the President had expressed his willingness to send envoys to Panama. That is, the subjects for discussion in the congress were not set forth with sufficient fullness or definiteness, and that nothing was said by them as to the powers of the envoys or the mode of organization of the congress. But as the want of the adjustment of these preliminaries, could, at all events, only be productive of some delay, the President had determined to waive the objection on this score and, "should the senate of the United States, now expected to assemble in a few days, give their advice and consent," to at once send commissioners to the congress. [2]

A few days later, in his first annual message, the 6th of December, 1825, Mr. Adams, after stating the fact that the United States had been invited to send envoys to the congress at Panama, said: "The invitation has been accepted, and ministers on the part of the United States will be commissioned to attend at those deliberations and to take part in them, so

[1] N. A. Review, January 1826. Also Marten's Nouveau Receuil, Vol. VI., p. 791.

[2] U. S. St. Pap., F. R., V., 838.

far as may be compatible with that neutrality, from which it is neither our intention, nor the desire of the other American states, that we should depart."[1]

Nothing is here said in respect of the "advice and consent" of the senate; an omission to which many of the senators took decided exception; and it was owing, doubtless, to the criticism of his position in this respect, that the President, in sending the names of the commissioners to the senate for their confirmation, said, in the accompanying message, December 26, "Although this measure was deemed to be within the *constitutional competency of the executive*, I have not thought proper to take any steps in it before ascertaining that my opinion of its expediency will concur with that of both houses of the legislature; first, by the decision of the senate upon the nominations to be laid before them; and, secondly by the sanction of both houses to the appropriations, without which it cannot be carried into effect."[2]

In asserting the very doubtful prerogative of the executive to institute a new and extremely important mission without assent of congress, Mr. Adams raised a storm of opposition against himself, and prejudiced at the very outset many minds against the whole project. The constitutional point was discussed at great length both in and out of congress. Mr. Adams afterwards admitted that his language was "positive," and "gave a handle" to misconstruction—though misconstruction was "palpably erroneous." He even considered the "humiliating" act of sending a note of explanation to the senate (Memoirs, VII. 99.) The discussion of this controversy belongs properly to the subject of constitutional history, rather than to a history of the Panama mission.

In this message to the senate, the President explains the general objects of the congress, and states the special subjects which, in his opinion, should be discussed therein. "The United States," he declares, "neither intend nor are expected to take part in any deliberations of a belligerent character; that the motive of their attendance is neither to contract alliances, nor to engage in any undertaking or project importing hostility, to any other nation."

[1] Statesman's Manual, I., 582. [2] U. S. St. Pap., F. R., V., 834.

The inexperience of the Southern American nations in the field of diplomacy, had led them to adopt erroneous notions of their duties towards other nations; they had, in their commercial regulations, discriminated in favor of certain states, and in some cases, to the injury of the United States. By our influence in the proposed congress, the President thought these tendencies would be corrected. "It is believed to be of infinite moment that the principles of a liberal commercial intercourse should be exhibited to them, and urged with disinterested and friendly persuasion upon them."

Next, the President thought, "The consentaneous adoption of principles of maritime neutrality" should form a subject of consideration at this congress. The doctrine of "free ships, free goods," and the reasonable restriction upon the extent of blockades, might be better established by general agreement at such a meeting than by partial treaties with each of the nations separately.

Another important subject was the advisability of "an agreement between all the parties represented at the meeting, that *each will guard, by its own means*, against the establishment of any future European colony within its borders * * * This was more than two years since, announced by my predecessor to the world as a principle resulting from the emancipation of both the American continents. It may be so developed to the new southern nations that they will all feel it as an essential appendage of their independence."

The President suggested also that the United States might exert a beneficial influence at the meeting, in the advancement of religious liberty. Most of the new states had by their constitutions established a state church; and there was no toleration of any other than the dominant sect—the Roman Catholic. "The abandonment of this last badge of religious bigotry and oppression" might be effectually pressed by those who concurred in the principles of freedom of conscience.

Indirectly, the United States might have an influence upon certain projects of the southern republics which might affect our own interests.[1]

[1] The reference here is to the rumor of an expedition fitting out by Mexico and Colombia for the invasion of Cuba and Porto Rico.

"In fine," said the President, "a decisive inducement with me was to show our friendship for the new republics."

In a message to the house of representatives upon the same subject, dated the 15th of March, 1826, Mr. Adams enlarges upon these topics at considerable length, and places the importance of the congress on a very high plane. "It may be," he says, "that in the lapse of many centuries, no other opportunity so favorable will be presented to the government of the United States to subserve the benevolent purposes of Divine Providence, to dispose the promised blessings of the Redeemer of mankind, to promote the prevalence in future ages of peace on earth and goodwill to men, as will now be placed in their power by participating in the deliberations of this congress. * * *

"It looks to the amelioration of the condition of man. It is congenial with that spirit which prompted the declaration of our independence; which inspired the preamble of our first treaty with France; which dictated our first treaty with Prussia, and the instructions under which it was negotiated; which filled the hearts and fired the souls of the immortal founders of our revolution." [1]

The first impression on reading these two special messages of Mr. Adams on the Panama Congress is, that he had experienced a decided change of mind since leaving the state department. During the long controversy upon the question of recognition, and upon the declaration of Monroe itself, Adams was the conservative influence in the cabinet, counseling caution and delay. He was even severe in his criticism of Clay's enthusiasm in favor of Spanish America; and as late as the year 1821, as we have seen (diary, March 9th), he thought the United States had nothing to gain by a close alliance with

[1] This effusion of Adams is quite in the strain of those of South Americans. The following specimen is found in the request of the government of Peru to the government of Buenos Ayres to send representatives to the congress:—"The day of the meeting of our representatives will be an immortal epoch in the diplomatic history of America. A century hence, when posterity seeks the origin of our political institutions, they will recall the treaties which have consolidated our governments; the deliberations of the Isthmus will be regarded with veneration. What will the Isthmus of Corynth be, in comparison with that of Panama?" Martens: Nouveau Recueil des Traités, VI., 788.)

those states. In a Fourth of July oration of this same year (1821), Mr. Adams said, "Whenever the standard of freedom and independence has been or shall be unfurled, there will her (America's) heart, her benedictions, and her prayers be. But she goes not abroad in search of monsters to destroy. She is the well-wisher of all. She is the champion and vindicator only of her own."[1] We have seen also how coolly Mr. Adams received the intimation of an invitation to be represented at the congress. A still later evidence of his views is asserted by Mr. Ingham in the debate in the house of representatives. This is in the shape of an article in the National Intelligencer, in the spring of 1825, in answer to an article in a Philadelphia paper favoring the proposed congress, and supposed to have been written by Clay. Although the authorship of these articles is not absolutely certain, yet the internal evidence points strongly in the direction indicated by Ingham, that is, to Clay and Adams. They illustrate well the two views of the question as brought out in the debates of congress. The first, supposed to be by Clay, terminates as follows:—

"This scheme of a general confederation of the Americans is submitted to the public as a means of securing power abroad and peace and happiness at home. Humanity, policy, and reason, call upon us to rivet the bonds of fraternal affection, etc., and to guard, with a sacred vigilance, against the rupture of a single link. A confederation alone is competent to this duty. Without it we submit to the ordinary fate of other nations; jealousy, discord, and war, whenever any nation thinks itself strong enough to wage one with impunity."

The following is the comment, supposed to be by the President, upon this article.

"We have seen the purpose for which the statesmen and government of Colombia are said to desire to hold a congress or Amphictyonic council, as it has been called, of the American governments, to which it is surmised that the United States have been, or are to be invited, to become a party. We cannot permit this proposition to pass without a remark, lest our silence might be taken for assent to it, in any shape; or even for indifference

[1] Benton's Debates, VIII., 435.

in regard to it, so far as this nation is embraced in it. If the public sentiment be in accord with ours on this point, we shall never send a representative to any congress of nations, whose decisions are to be law to this nation. Our own confederacy insures the power and the mode of asserting our own rights. and vindicating our wrongs.

"By an alliance with any other nation or nations, it is obvious we shall not strengthen but expose ourselves. We should lose, by any such alliance, the independence which is our boast. For what is independence but a name, if the questions of peace, of war, etc., are to be determined for us, not by the congress of the United States, but by a stupendous confederacy, in which the United States has but a single vote." "It will be seen that we consider the proposed confederation as intended to possess the powers, as well as the name of the ancient Amphictyons, having power to cause obedience to its decrees. It is surely not necessary to urge arguments against a departure from that cardinal principle in our foreign intercourse which distrusts and rejects alliances with foreign nations for any purpose." "Every one will see at a glance the vital objections there are to this government's coupling its destinies with those of any other people on earth.

"Nor have we sacred wars to wage, nor occasion for a Holy Alliance to protect either our religious or our political rights. It is no reason, because such a measure has found favor among the nations of Europe, that it should be resorted to by the nations of America.

"We have spoken of the proposed congress of American governments as of a confederacy of those nations. If, however, nothing more be meant than a conference of ministers, etc., to consult upon what the interest of the whole may seem to require, we do not know that we should see any other objection to it, than that it can be productive of nothing beneficial. If such a conference were proposed, perhaps mere courtesy might induce an assent to it on the part of this government, were it only to assert the doctrine that, in becoming independent of the metropolitan governments, the governments of America ought not, will not be dependent on one another.

"Against the magnificent scheme of the Philadelphia *Mutius*, we enter our decided protest. We want not his Areopagus, any more than we do the Amphictyons. For our Areopagus, we are satisfied with our bench of judges; and, for our council of

Amphictyons, we choose our congress. We desire, in fine, to be members of no confederation but that of the United States."

Six months later, we find, in Mr. Adams' messages, an apparent change of policy. He said, however, on being reminded of this fact by Mr. Forsythe, that "he did not recollect any change in policy, but that there had been a great change in circumstances." [1]

The circumstances which induced Washington and the early statesmen to adopt the policy of avoiding all entangling alliances, had passed away, and with them had gone the necessity for the policy itself. In his message to the house of representatives, referred to above, Mr. Adams says that he had, before accepting the invitation, considered the question, "whether the measure might not have a tendency to change the policy" of the nation in respect to its foreign policy. And "mindful of the advice given by the Father of our country, in his Farewell Address, that the great rule of conduct for us in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connection as possible; and faithfully adhering to the spirit of that admonition, I cannot overlook the reflection, that the counsel of Washington, in that instance, like all the counsels of wisdom, was founded upon the circumstances in which our country and the world around us, were situated at the time when it was given. That the reasons assigned by him for his advice, were, that Europe had a set of primary interests, which to us had none, or a very remote relation, etc." [2] But Washington thought, that by our union and rapid growth we should soon be in a position to defy material injury from external annoyance; when we might cause our neutrality to be respected, and choose peace or war, as our interests, guided by justice, should counsel.

"But, compare," continues Adams, "our situation and the circumstances of that time with those of the present day, and what from the very words of Washington, then, would be his counsels to his countrymen now? Europe has still her set of primary interests with which we have little or a remote relation. Our distant and detached situation with reference to

[1] J. Q. Adam's Diary, December 8, 1825. [2] *Supra*, p. 250.

Europe remains the same. But we were then the only independent nation of this hemisphere; and we were surrounded by European colonies, with the greater part of which we had no more intercourse than with the inhabitants of another planet. Those colonies have now been transformed into eight independent nations, extending to our very borders. Seven of them republics like ourselves, with whom we have an immensely growing commercial, and *must* have, and have already important political connections; with reference to whom, our situation is neither distant nor detached; whose political principles and systems of government, congenial with our own, must and will have an action and counter-action upon us and ours, to which we cannot be indifferent if we would."

Mr. Adams would seem to have caught the glowing enthusiasm of his secretary of state in respect to the new Spanish-American states. For once, he seemed to have put aside the cool, impassionate reasoning of the experienced diplomat to assume the rôle of a somewhat visionary statesman. As John Holmes said in the senate, "My life for it, this is no scheme of the president—he is a cool, deliberating, calculating, penetrating, discriminating, reasoning sort of politician. It is a toy yielded to the secretary of state. The president has no strong partiality for the Spanish-Americans."

It is probable, however, that Mr. Adams' proposal fell far short of that of Clay. There is no evidence that he ever intended or wished to have the United States join a general confederacy of American states or to be pledged in any way to take up arms in defense of any of them. He doubtless contemplated gaining a diplomatic point over Canning, and perhaps Europe in general, in respect of certain rules of maritime law; and to procure for the United States favorable standing in regard to commerce and navigation.

It will be observed, moreover, that Adams' construction of the objects of the proposed congress differs materially from that of the governments of the new states. For these the meeting was to be primarily and chiefly for belligerent purposes; to devise measures offensive and defensive in the war then waging with Spain, or in any future war with European powers. Now, although the United States were not expected to take any part or even to discuss the *present* war, they were, it would seem,

expected to co-operate with the other powers represented at the congress in measures of resistance in possible future wars. That is, in wars to oppose the interference of the "Holy Allies" in the affairs of the Spanish-American republics; and to resist attempts of European powers to establish colonies on American soil. In other words it was expected that the United States would be prepared to "redeem the pledge" supposed to have been given by President Monroe in his message of December 2, 1823.

The President's special message to the Senate of December 26, 1825, nominating Richard C. Anderson and John Sergeant, as envoys to the Panama Congress, was, two days later, referred to the Committee of Foreign Relations. On the 16th of January, 1826, Mr. Macon, of North Carolina, as chairman of the committee, made a long report adverse to the views of the President in every respect, and concluded with the following resolution [1]:—

"*Resolved*, that it is not expedient at this time, for the United States to send any ministers to the congress of American nations assembled at Panama."

The first objection of the committee was that "such a mission threatened a wide departure from our time-honored policy of avoiding all entangling alliances. Fervently as we had sympathized with these infant republics, whose independence we were the first to recognize, we had maintained an exact neutrality and forborne to take an active part in their struggle, notwithstanding our irritation with Spain was great. What new necessity had arisen to prompt us to establish new relations in violation of that policy? For avow neutrality as we might, the conference would draw this country insensibly from the safe ground. * * * As to the objects proposed, not by the Spanish republics but by our President in his message, there was nothing to show that they would be admitted in the congress as fit matters of discussion; nor were these independent states likely to adopt in concert, and without compulsion, principles affecting their separate commerce, religion, and in-

[1] The other members of the committee were Tazwell of Virginia, Gaillard of South Carolina, Mills of Massachusetts, and White of Tennessee.

ternal concerns, which treaties after the usual diplomatic forms, might not procure far more readily and with less offense to jealous powers across the seas. The very situation of Cuba and Porto Rico was an inducement to the United States not to change the attitude of impartial spectator, by which we reserved ourselves for a more serious emergency. In fine, the idea of European encroachment or colonization no longer existed; no common subject now remained of sufficient magnitude to require a movement so novel and so startling to the other hemisphere as the assembling of a congress of all the American republics; and should such an exigency hereafter occur, the United States, the oldest and most experienced republic of them all, would probably take the initiative and send out invitations consistent with their own friendship and respect, and upon terms the most fair and liberal."[1]

The debate in the senate upon the resolution of the Commitee of Foreign Relations continued during nearly two months, the party opposed to the administration interposing all obstacles which party tactics could suggest. The subject of the Panama Congress was seized upon by the opponents of Adams and Clay as their first point of attack, and marks the division of parties upon new lines. The leaders of the opposition in the Senate were Benton, Berrien, Branch, Hayne, King, Macon, Randolph, Tazwell, Van Buren, and Woodbury. But when the vote on the resolution was finally taken, March 14, 1826, it was determined in the negative by a majority of five. Then a vote on the nomination of Messrs. Anderson and Sergeant was immediately taken, and carried in the affirmative, in the case of Anderson, 27 to 17, and in that of Sergeant, 26 to 18.

The next day, March 15, the President sent a special message to the House of Representatives, accompanied by the papers upon the subject, and recommended the appropriation of money for the expenses of the mission. On the 25th, the Committee of Foreign Relations, to whom the message had been referred, reported through its chairman, Mr. Crowninshield

[1] Schouler's History of the United States, III., 362. See report in full in Sen. Ex., Dec., 19th Cong., 1st. Sess. No. 34. Also, "International American Conference, IV., 53.

shield, in favor of the appropriation; and submitted the following resolution:—

"*Resolved*, that in the opinion of this House, it is expedient to appropriate the funds necessary to enable the President of the United States to send ministers to the Congress of Panama."

A bill providing for the necessary appropriations was on the same day (March 25) reported by the committee of ways and means.

The resolution was taken up in the committee of the whole on the 4th of April. The debate began on an amendment offered by M'Lane, of Delaware, proposing that "such ministers should in no way make any compact or engagement with the Spanish-American states, in regard either to any threatened intervention or any future colonization by the European powers on the American continents." Among those who advocated this amendment, were M'Lane, Rives, Hamilton, Buchanan, Hemphill, Ingham, Forsyth, Archer, and Cambreling, all of whom were opposed to the administration. On the other hand, the friends of the administration—Webster, Everett, Buckner, Johnson, Wurtz, Thompson, and others,—opposed the amendment as being an infringement of the constitutional duties of the President. On the 20th of April the amendment was carried, 99 to 95; whereupon the majority of the supporters of the original resolution abandoned it as amended, and the vote on it being taken the next day (April 21), it was lost—54 ayes, 142 noes.

The bill reported by the committee of ways and means was then taken up; and after the failure of M'Duffie's amendment to strike out the enacting clause, passed (April 22) by a vote of 134 to 60.

The senate concurred in this bill with but three dissenting votes, and it became a law May 24th, 1826.

From the first the mission was opposed in both houses largely on party grounds. But there was one other reason advanced, that should not be passed without notice. One of the subjects of discussion proposed in the letters of invitation was the question of the recognition of the independence of Hayti; but Hayti was in the hands of negro revolutionists, and the

proposition was therefore very repugnant to the feelings of Southern men. Hayne said in the Senate (March 14), "While connected with slavery, can we consent to treat with other nations, and least of all ought we to touch this question of the independence of Hayti in conjunction with revolutionary governments, whose own history affords an example scarcely less fatal to our purpose? Those governments have proclaimed the principles of liberty and equality, and have marched to victory under the banner of 'universal emancipation.' You find men of color at the head of their armies, in their legislative halls, and in their executive departments."[1] And Hamilton, of South Carolina, said in the House, "I should avow what I believe to be the sentiments of the Southern people on this question; and this is, that Haytien independence is not to be tolerated in any form. * * * A people will not stop to discuss the nice metaphysics of a federative system when havoc and destruction menace them in their own doors."

The opposition to slavery which had been early proclaimed in the Spanish-American republics had moreover aroused the fears of the slave-holders in the United States.

There were others, however,—impartial men—who saw a danger in any close alliance with the Spanish-American States. Mr. Theodore Lyman, writing at this time said:—

"In the vindications of the Panama mission we have read (many prepared with great ability), it has appeared to us, that there was throughout an inherent defect in the application of the principle upon which their reasoning depended. Their authors have seemed to consider, there was an essential difference between a confederacy of European States and one of America. We confess, we perceive none. The governments of the old continent unite for the consolidation of the throne,—those of the new for the defence of the republic. The motives and objects of these respective alliances are different, but for this country to become a member either of one or the other is equally dangerous in its consequences, equally a violation of the principles of the constitution, and equally a departure from the policy and practice of the government."[2]

[1] Benton's Debates, VIII., 427.

[2] Diplomacy of the United States, II., 489.

The instructions of Clay to the envoys, dated May 8th 1826, are very full, embracing all possible questions of discussion.

"The assembling of a congress at Panama," it is declared, "composed of diplomatic representatives from independent American nations will form a new epoch in human affairs."

The commissioners were to press the object of "devising means to preserve peace in future among the American nations themselves, and with the rest of the world;" "to bring up the arrears of civilization, as applied to the ocean, to the same forward point which it has attained on land. * * * And to bring forward the proposition to abolish war against private property and non-combatants upon the ocean;" "a definition of blockade;" "the mutual regulation of commerce and navigation;" "to propose a joint declaration of the several American states, each, however, acting for and binding only itself, that within the limits of their respective territories no new European colony will hereafter be allowed to be established;" to dissuade the republics of Mexico and Colombia from attempting the conquest of Cuba and Porto Rico. The question of an interoceanic canal was to be discussed; and if "the work should ever be executed so as to admit of the passage of sea vessels from ocean to ocean, the benefits of it ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe upon the payment of a just compensation or reasonable tolls." In the opinion of the President, Hayti was not yet in a position to be recognized as independent. The propriety of free toleration of religion was to be pressed upon the other American states.

On account of the delay caused by the protracted debates in congress, the envoys of the United States did not take part in the Panama Congress. Mr. Anderson, our minister to Colombia, died before reaching the place of meeting, and Mr. Sergeant did not leave the United States.

The representatives of Colombia, Central America, Peru, and Mexico met at Panama on the 22d of June, 1826. Chili, Brazil, and Buenos Ayres were not represented, although their governments approved of the movement. England and the Netherlands sent Mr. E. Dawkins and Colonel VanVeer respectively to watch the proceedings.

After holding ten meetings, the congress agreed to "a treaty of perpetual union, league, and confederation" between the republics represented, and providing for the adhesion to it of other American states within the space of one year. The treaty was a defensive and offensive alliance for the primary purpose of mutually guaranteeing the integrity of the new states, and was therefore an alliance of which the United States could have had no interest in becoming a party. And, indeed, of the Spanish-American states, Colombia alone ratified the treaty. Bolivar, the originator of the congress, was dissatisfied with the outcome; and the political disturbances of the years succeeding that of 1826 prevented a renewal of the project.

Before separating, the congress had provided for a meeting the next year at Tacubaya, near the city of Mexico; and this time the envoys of the United States, Mr. Sergeant and Mr. Poinsett—appointed in place of Mr. Anderson—were on hand; but the delegates from the Spanish-American states did not appear. Thus ended the first attempt to form an alliance of American states. The Monroe Doctrine was forgotten for the time; and the Spanish-Americans were left to work out their destiny in their own way, and to acquire by long training in the school of experience the capacity for self-government which they lacked at that time.[1]

AMERICAN CONGRESSES, 1847—1882.

Although the Panama Congress failed to accomplish any of the objects for which it had been assembled, yet the Spanish-Americans did not relinquish the idea of a general union of their states. And a brief notice of the subsequent attempts toward that end will be given here.

1. *The Congress of Lima*, 1847. The Republics of Bolivia,

[1] The documents and details of the Panama Congress are given in full in the 4th volume (Historical Appendix) of the proceedings of the *International American Conference*. See also: Lyman's *Diplomacy of the United States*, II., 407; *American Review and Whig Journal*, January, 1846; A. W. Young: *American Statesman*, 352; *Am. State Pap.*, VI., 834-910; Benton's *Debates*, VIII.; Benton's *View*, I.; Webster's *Works*, III., 178; Niles's *Register*.

Chili, Ecuador, New Granada, and Peru met by their representatives at Lima, 1847, for the purpose of "maintaining their independence, sovereignty, and territorial integrity, and of entering into such other compacts as might be conducive to promote their common welfare." The result of their labors were a treaty of confederation, a treaty of commerce and navigation, a consular convention, and a postal treaty. But these treaties, like those of Panama, became dead letters.

2. *The Continental Treaty of* 1856. This was a treaty entered into at Santiago, in 1856, by the Republics of Peru, Chili, and Ecuador, for the purpose of cementing a substantial union, etc., and promoting moral and material progress. Other states were to be invited to join the league. It never became law. It shows a spirit of hostility to the United States, it is said, on account of the Walker expeditions of those days.

This growing fear of the United States appears in a communication of the government of Costa Rica to that of Colombia, in 1862. "There are parties there [in the United States] whose doctrines can be fatal for our not yet well-established nationalities, and we must neither forget the lessons of the past nor lose sight of the fact that the cessation of the vandalic filibustering expedition of 1855 and the following to 1860 was due to the intervention, although tardily carried into effect, on the part of Europe.

"Under this aspect of the question, if our Republics could have the guaranty that they have nothing to fear from the United States of North America, it is indubitable that no other nation could be more useful and favorable to us. Under the shelter of her powerful eagles, under the influence of her wise institutions, and under the spur of her astonishing progress, our newly-born nationalities should receive the impulse which they now need. * * *

"In view of the above considerations, the idea has occurred to my government that a new compact might be draughted by which the United States should bind themselves solemnly to respect, and cause others to respect, the independence, sovereignty, and territorial integrity of the sister Republics of this continent; not to annex to their territory, either by purchase or by any other means, any part of the territory of the said Republics."

3. *The Congress of Lima*, 1864. At this congress, which met upon the invitation of Peru, the following States were represented: Bolivia, Chili, Ecuador, Colombia, Guatemala, Peru, the Argentine Republic, and Venezuela. The object, according to the letter of invitation, was to form a Latin American Union, and to "organize into only one family" the different Republics which had been Spanish.

Colombia, in accepting the invitation, expressed "the opinion that the United States ought not to be invited, because their policy is adverse to all kinds of alliances, and because the natural preponderance which a first-class power, as they are, has to exercise in the deliberations, might embarrass the action of the congress."

The congress met on the 14th of November, 1864, the anniversary of the birth of Bolivar; but the results of its labors do not appear to have had any more permanent effects than those of previous congresses.

4. *The proposed Congress of Panama*, 1881. The object of this congress, of which Colombia was the prime mover, was to make a treaty for the settlement of international disputes by arbitration. All the independent Spanish-American states except Hayti replied to the invitation of Colombia; and for the most part the acceptance was enthusiastic. The Argentine Republic, however, replied that her government did not believe that arbitration alone was an adequate means for the settlement of Spanish-American controversies.

The congress was not held, as intended, owing to the war which at this time broke out between Chili on the one side and Peru and Bolivia on the other.

5. *The proposed Congress at Washington*, 1882. This was a conception of Mr. Blaine's, while Secretary of State in 1881. The following circular letter on the subject explains the reasons for taking it up:—

"DEPARTMENT OF STATE,

"WASHINGTON, November 29, 1881.

"SIR: The attitude of the United States with respect to the question of general peace on the American continent is well
[illegible]n through its persistent efforts for years past to avert the warfare, or, these efforts failing, to bring positive con-

flicts to an end through pacific counsels or the advocacy of impartial arbitration.

"This attitude has been consistently maintained, and always with such fairness as to leave no room for imputing to our government any motive except the humane and disinterested one of saving kindred states of the American continent from the burdens of war. The position of the United States as the leading power in the New World might well give to its government a claim to authoritative utterance for the purpose of quieting discord among its neighbors, with all of whom the most friendly relations exist. Nevertheless, the good offices of this government are not and have not at any time been tendered with a show of dictation or compulsion, but only as exhibiting the solicitous goodwill of a common friend.

"For some years past a growing disposition has been manifested by certain states of Central and South America to refer disputes affecting grave questions of international relationship and boundaries to arbitration rather than to the sword. * * *

"The existence of this growing tendency convinces the President that the time is ripe for a proposal that shall enlist the good-will and active co-operation of all the states of the Western Hemisphere, both north and south, in the interest of humanity and for the common weal of nations. * * *

"Impressed by these views, the President extends to all the independent countries of North and South America an earnest invitation to participate in a general congress, to be held in the city of Washington on the 24th day of November, 1882, for the purpose of considering and discussing the methods of preventing war between the nations of America." * * *

Of the South American states, Chili, Colombia, the Argentine Republic, Peru, Hayti and San Domingo made no reply; Nicaraugua and Bolivia answered that they would take the matter into consideration; Costa Rica wished to wait for the action of Colombia; the others accepted the invitation.

Owing to the international complications in South America, the proposed congress of 1882 was indefinitely postponed. The letter of Mr. Frelinghuysen to the ministers of the United States in those countries, withdrawing the invitations, dated August 1, 1882, is in part as follows:—

"* * * At the time that proposal was put forth the President expressed the fervid hope that by the date fixed for the meeting of the congress the questions now dividing some of the republics of the southern continent would have disappeared, and that the representatives of the several commonwealths could meet with freedom to discuss the future aspects of the question [preservation of peace on the continent], unaffected by any existing national difficulties.

"The President, however, now directs me to instruct you to inform the Government of * * * that inasmuch as that peaceful condition of the South American republics, which was contemplated as essential to a profitable and harmonious assembling of the congress, does not exist, and he having besides on the 18th day of April, 1882, submitted the proposition to Congress without evoking an expression of its views on the subject, and no provision having been made by it for such a congress, he is constrained to postpone the projected meeting until some future day. * * * You will communicate this dispatch to the minister for foreign relations of * * * at an early day by reading it to him, and, if he shall so desire, leaving with him a copy of it." [1]

THE INTERNATIONAL AMERICAN CONFERENCE, 1890.

Beginning with the year 1880, various legislation was proposed in congress looking to a closer commercial and political union with the Latin American states. On January 21, 1880, the Hon. David Davis introduced in the Senate, by request of Mr. Hinton Rowen Helper, a "bill for the encouragement of closer commercial relationship between the United States and the Republics of Mexico, Central America, the Empire of Brazil, and the several Republics of South America." The proposition was to call a congress of American States, to consider the question of an international railway.

On the 24th of April, 1882, Senator Cockrell, of Missouri, at the suggestion of Mr. Helper, introduced a bill for a similar

[1] The attitude of the government of the United States in respect to the war between Chili and Peru, and in respect to certain boundary disputes between Spanish-American States, had engendered a strong feeling of resentment against the United States in many of those States. On the subject of the Congresses, *See*, International American Conference, IV., 202-289.

purpose, which provided for a commission to visit South America. Senator Morgan, of Alabama, introduced a like bill the same day, particularly aimed at the construction of an international railroad.

Similar bills were introduced in the House of Representatives at this time, and were referred to the Committee on Foreign Affairs. The Committee reported, June 20, adversely, and no further action was taken. But the same or similar bills were introduced in both Houses the following year (1883). One of these, offered in the House by Mr. Townshend, of Illinois, proposed the establishment of a "customs union of America."

On the 3d of March, 1884, Mr. Cockrell re-introduced, in the Senate, his bill of 1882, which was favorably reported by the Committee on Foreign Relations; and a similar bill in the House received a favorable report from the like Committee in that body. The substance of these bills became a law in the form of an amendment to the act making appropriations for the consular and diplomatic service for the fiscal year ending June 30, 1885.

Under the authority of this act the President appointed a commission, consisting of George H. Sharpe, of New York; Solon O. Thacher, of Kansas; and Thomas C. Reynolds, of Missouri, with William Eleroy Curtis as secretary, to visit the several countries of Central and South America, to ascertain the best modes of securing more intimate international and commercial relations. Mr. Sharpe having resigned, in March, 1885, W. E. Curtis was appointed commissioner to succeed him. The reports of this commission are to be found in H. R. Ex. Doc. 226, Forty-eighth Congress, second session, and H. R. Ex. Doc. 50, Forty-ninth Congress, first session. The reports recommended that an invitation be extended by the United States to the several other governments of America to join at Washington in a conference to promote commercial intercourse and to prepare some plan of arbitration.

In 1886, bills proposing a customs union, to promote arbitration, to construct an international railway, and for a common silver coin, were introduced and adversely reported upon in both houses. Finally, however, Mr. McCreary, of Kentucky, reported from the Committee on Foreign Relations of the House (April 15, 1886) a bill authorizing the President to

arrange a conference for the purpose of promoting arbitration and encouraging reciprocal commercial relations between American States. This bill was accompanied by a long report setting forth the probable advantages of the proposed conference in opening new markets for our products, and in facilitating the amicable settlement of disputes.

A minority report opposing the proposed conference was submitted by Mr. Perry Belmont.

On the 6th of May, Senator Frye reported from the Committee on Foreign Relations a bill, as a substitute for several similar measures which had been referred to that committee. "to promote the political Progress and commercial prosperity of the American nations." This bill proposed a conference of American nations at Washington; and the subjects to be considered are for the first time set forth in detail. It passed the Senate June 17, 1886, but no action was taken on it in the House. Various other measures were proposed thereafter, but it was not till 1888 that final action was taken. On the 4th of January, 1888, Mr. McCreary re-introduced his bill in the House, and on the 29th of February it was passed. When it reached the Senate, Mr. Frye reported his own bill (March 21) as a substitute, which was passed the next day. A conference committee having been appointed by the two Houses, the report which it submitted passed the House but was rejected by the Senate (April 25). On the 27th of April a new conference was ordered, and an agreement having been reached, the bill was finally passed by both Houses on the 10th of May, 1888.[1]

This act requested and authorized the President of the United States to invite the several governments of the Spanish-American Republics and Brazil to join the United States in a conference to be held at Washington, in the year 1889, for the purpose of discussing some plan of arbitration for the settlement of disagreements and disputes that may hereafter arise between them, and for considering questions relating to the improvement of business intercourse and means of direct communication between said countries, and to encourage such

[1] History of the legislative action on this subject is given as considered in the 4th volume of the proceedings of the International American Conference, 293–375.

reciprocal commercial relations as will be beneficial to all and secure more extensive markets for the products of each of said countries.

Section 2. In forwarding the invitations the President shall set forth that the conference is called to consider:—

(1) Measures to promote peace and prosperity.

(2) An American Customs Union, etc.

(3) Regular and frequent communication between the parties of the several American states.

(4) A uniform system of customs regulations, etc.

(5) The adoption of a uniform system of weights and measures, and laws to protect the patent-rights, copyrights, and trade-marks of citizens of either country in the other, and for the extradition of criminals.

(6) The adoption of a common silver coin.

(7) A definite plan of arbitration of all questions, disputes, and differences, etc.

(8) To consider such other subjects relating to the welfare of the several States represented, etc.

The sum of seventy-five thousand dollars was appropriated for the incidental expenses.

The President, with the advice and consent of the senate, was to appoint ten delegates to the Conference who should serve without compensation.

In pursuance of the provisions of this act, invitations were sent by Mr. Bayard, Secretary of State, to the governments of the several American States. Favorable replies were received, and the Conference held its first meeting, in the Diplomatic Chamber of the Department of State, Washington, D. C., at noon, on the 2d of October, 1889. After listening to an address of welcome by Mr. Blaine, Secretary of State, the Conference completed its organization in so far as to elect Mr. Blaine President, and appoint a committee on committees. Then accepting the invitation of the President of the United States to make an excursion through the country, the members did not reassemble till the 5th of December. On the 7th, Mr. Zegarra, of Peru, and Mr. Romero, of Mexico were elected Vice-presidents.

The delegates of the United States were; John B. Henderson, Cornelius N. Bliss, Clement Studebaker, T. Jefferson

Coolidge, William Henry Trescot, Andrew Carnegie, Morris M. Estee, John F. Hanson, Henry G. Davis, and Charles R. Flint.

The States represented were: Hayti, Nicaragua, Peru, Guatemala, Uruguay, Colombia, Argentine Republic, Costa Rica, Paraguay, Brazil, Honduras, Mexico, Bolivia, United States, Venezuela, Chili, Salvador, and Ecuador.

The secretaries for the Conference were: H. Remsen Whitehouse, Fidel G. Pierra (till February 14, 1890), and José Ignacio Rodriguez (succeeding Mr. Pierra).

The following standing committees were appointed, December 7:—

1. Executive Committee.
2. On Customs Union.
3. On Communication on the Atlantic.
4. On Communication on the Pacific.
5. On Communication on the Gulf of Mexico and the Caribbean Sea.
6. On Railway Communication.
7. On Customs Regulations.
8. On Port Dues.
9. On Weights and Measures.
10. On Sanitary Regulations.
11. On Patents and Trade-marks.
12. On Extradition.
13. On Monetary Convention.
14. On Banking.
15. On International Law.
16. On General Welfare, to report a plan of arbitration, etc.

The reports of these various committees were subjected to more or less extended debate, and in most cases approved. Thus, the report of the committee on weights and measures as amended and adopted was as follows:

"*Resolved*, that the International American Conference recommends the adoption of the metrical decimal system to the nations here represented, which have not already accepted it." (*Records of the Conference*, I., 77–92.)

So the report in favor of an Inter-continental Railway was adopted. This proposed the appointment of a commission composed of a body of engineers, of whom each nation should

appoint three, to ascertain the possible routes, to determine their true length, to estimate the cost of each, and to compare their respective advantages. The railroad, if built, should be "declared forever neutral." (*Ib.*, 93–102.)

The committees on communication on the Atlantic, the Pacific, and the Gulf of Mexico, reported in favor of subsidizing one or more steamship lines in each case, and the reports were unanimously adopted. Regular mail and telegraphic communication was also recommended. (*Ib.*, 264–342.)

On the report of the committee on an International American Monetary Union, a very long and interesting debate was had. The recommendation as finally adopted was as follows :—

"(1) That an International American Monetary Union be established.

"(2) That as a basis for this union an international coin or coins be issued which shall be uniform in weight and fineness, and which may be used in all the countries represented in this Conference.

"(3) That to give full effect to this recommendation there shall meet in Washington a commission" to consider the question, etc. (*Ib.*, II., 624–828.)

The Report on an International American bank as adopted unanimously was as follows :—

"*Resolved*, That the conference recommends to the governments here represented the granting of liberal concessions to facilitate inter-American banking, and especially such as may be necessary for the establishment of an International American Bank, with branches, or agencies, in the several countries represented in this Conference." (*Ib.*, 829–875.)

An interesting discussion took place on the report on the free navigation of rivers, which resulted in the adoption of the following recommendations, the United States and Nicaragua voting in the negative :—

"(1) That rivers which separate several states, or which bathe their territory, shall be open to the free navigation of the merchant marine or ships of war of riparian nations.

"(2) That this declaration shall not affect the jurisdiction nor

the sovereignty of any of the riparian nations either in time of peace or war." (*Ib.*, 939–953.)

The most interesting part of these reports and discussions are those in respect of a Customs Union, and of Arbitration.

The committee on a Customs Union was unanimous in the opinion that an American Customs Union, or Zollverein, was not as yet practicable, but many members and particularly the delegates of the United States, believed that a customs union in the sense of free trade between the American nations, was acceptable in principle, "because all measures looking to the freedom of commerce must necessarily increase the trade and the development of the material resources of the countries accepting that system, and it would, in all probability, bring about as favorable results as those obtained by free trade among the different states of this Union." The majority, instead of reporting on the customs union, simply recommended the concluding of "partial reciprocity treaties," taking into consideration "the special situation, conditions, and interests of each country, with a view to the promotion of the common welfare of all."

The minority, composed of the delegate of the Argentine Republic, Mr. Peña, and the delegate of Chile, Mr. Alfonso, submitted the following brief report:—

"*Resolved*, That the proposition of a Customs Union between the nations of America be rejected."

Mr. Peña, in support of the minority report, delivered a very able speech, in which he deprecated the attempt to introduce a system of commercial exclusiveness in the American continents, and took occasion to criticise severely the tariff system of the United States. In closing he said: "Affection and love for America are not wanting in me. I do not lack confidence in or gratitude towards Europe. * * * Let the century of America, as the twentieth century is already called, behold our trade with all the nations of the earth free, witnessing the noble deed of untrammeled labor, in which it has been truly said God measures the ground, equalizes the weapons, and apportions the light.

"Let America be for mankind!"

Much of the discussion which followed was in criticism or de-

fense of the tariff systems of the United States and other American States. The report of the majority prevailed, which indeed was of no great importance, as it left the question of reciprocity treaties to the initiation of the several States of America.[1]

Arbitration.—After a long debate upon the report on arbitration, the Conference adopted the following recommendations:

"The delegates from North, Central, and South America in congress assembled:

"Believing that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences;

"Recognizing that the growth of the moral principles which govern political societies has created an earnest desire in favor of the amicable adjustment of such differences;

"Animated by the conviction of the great moral and material benefits that peace offers to mankind, and trusting that the existing conditions of the respective nations are especially propitious for the adoption of arbitration as a substitute for armed struggles;

"Convinced by reason of their friendly and cordial meeting in the present Conference that the American Republics, controlled alike by the principles, duties, and responsibilities of popular government, and bound together by vast and increasing mutual interests, can, within the sphere of their own action, maintain the peace of the continent, and the good-will of all its inhabitants;

"And considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world approves;

"Do solemnly recommend all the Governments by which they are accredited to conclude a uniform treaty of arbitration in the articles following:

ARTICLE I.

"The republics of North, Central, and South America hereby adopt arbitration as a principle of American international law for the settlement of the differences, disputes, or controversies that may arise between two or more of them."

[1] International American Conference, I. 103–264.

ARTICLE II.

"Arbitration shall be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction, and enforcement of treaties."

ARTICLE III.

"Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following article."

ARTICLE IV.

"The sole questions excepted from the provisions of the preceding articles are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In which case for such nation arbitration shall be optional; but it shall be obligatory upon the adversary power."

The remaining articles (V.–XIX.) relate to the choice of arbitrators and umpires, and to questions of minor detail. The adoption of the fourth article shows a serious defect in the proposed system. It would seem that the delegates had not full confidence in the efficiency of arbitration. The Conference, moreover, was not unanimous in the adoption of this plan; the delegates from Chile and Mexico, while favoring the principle of arbitration, were opposed to the proposed treaty.

In the paper submitted by the delegates of Chile, Mr. Alfonso and Mr. Varas, they say that the recommendation of the committee "would produce, if carried into effect, more difficulties, and more pernicious results, than those which it proposes to obviate or avoid."

"The method suggested by the committee for the preservation of perpetual peace * * * is not, indeed, a novelty. From immemorial times it has been the subject of study, and more or less successful combinations, by writers on public law; and to-day it continues to be one of the principal bases of the study of international law.

"The Spanish-American nations, * * * have attempted on six different occasions, since 1826, to give form and application to that generous aspiration which prevails in the civilized

world; but their reiterated efforts, although formulated in terms less absolute or restrictive than those suggested by the Committee of General Welfare, have ended in complete failure, when subjected to the test of practice, and to the unexpected resistance of human passions and interests.

"* * * Arbitration being recognized, as it is, as a principle of international law, cannot, by any means, become a guaranty of peace if its application does not correspond to its nature.

"Its origin is the voluntary and free assent of the nations which find themselves in disagreement to trust to a third party the ascertainment and adjudication of their rights and interests; and its efficiency depends upon the respect, also voluntary, to be paid to its decisions, whatever be the obligations and sacrifices which it may impose. If arbitration is obligatory its own nature is thereby antagonized, and the moment it is forced upon the nations its decisions will lose their efficiency and the goodness of the principle itself will become discredited. * * *

"We the delegates of Chile, are unwilling to entertain the illusion that any conflict which may directly affect the dignity or the honor of a nation shall ever be submitted to the decision of a third party."

The paper of the Chilean delegates is given in full in the records of the Conference, vol. ii., pp. 972–986; and the answer of Mr. Cruz, of Guatemala, pp. 988–1001. The subject in full is in the same volume, pp. 954–1083.

A supplementary report on the right of conquest was made and discussed; and the following recommendation made:

"First. That the principle of conquest shall not, during the continuance of the treaty of arbitration (20 years), be recognized as admissible under American public law.

"Second. That all cessions of territory made during the continuance of the treaty of arbitration shall be void if made under threats of war or in the presence of an armed force.

"Third. Any nation from which such cessions shall be exacted, may demand that the validity of the cessions so made shall be submitted to arbitration.

"Fourth. Any renunciation of the right to arbitration, made under the conditions named in the second section, shall be null and void."

The Chilean delegates abstained from voting on this proposition, as on that of arbitration. The delegates of the United States at first opposed the absolute limitation of the right of conquest; but finally voted for it on the condition that it should have effect only during the existence of the treaty of arbitration, which was to run for twenty years; and thereafter till the nations should withdraw from it.[1]

International Library.—Before separating the Conference adopted unanimously the following resolution :—

" *Resolved.* That there be established at such location in the city of Washington as the Government of the United States may designate, to commemorate the meeting of the International American Conference, a Latin-American Memorial Library, to be formed by contributions from all the Governments represented in this Conference, wherein shall be collected all the historical, geographical, and literary works, maps, manuscripts, and official documents relating to the history and civilization of America, such library to be solemnly dedicated on the day on which the United States celebrates the Fourth Centennial of the discovery of America." By an amendment to the resolution, the name was to be the " Library of Columbus."

The Conference adjourned on the 19th of April, 1890. As in the case of so many previous American Congresses, the recommendations of this one have for the most part come to naught.

INTEROCEANIC CANAL.

Soon after the establishment of the independence of the Spanish-American Republics, the United States, as well as other States, European and American, were occupied with schemes for the construction of a ship canal across the isthmus which connects the two American Continents. It formed one of the proposed subjects of discussion at the Panama Congress of 1826. Clay, in his instructions to the commissioners to that Congress, said:

[1] Records of the Conference, II. 1122–1152. And the whole question of Arbitration, Ib., 954–1152.

"A cut or canal for purposes of navigation somewhere through the isthmus that connects the two Americas, to unite the Pacific and Atlantic Oceans, will form a proper subject of consideration at the Congress.

"* * * In the present limited state of our information as to the practicability and the probable expense of the object, it would not be wise to do more than to make some preliminary arrangements. The best routes will be most likely found in the territory of Mexico or that of the Central Republic. The latter Republic made to this Government, on the 8th day of February of last year, in a note to which Mr. Canaz, its minister here, addressed to this Department, a liberal offer, manifesting high and honorable confidence in the United States.[1] * * * If the work should ever be executed so as to admit of the passage of sea vessels from ocean to ocean, the benefits of it ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe upon the payment of a just compensation or reasonable tolls. What is most desirable at present is to possess the data necessary to form a correct judgment of the practicability and the probable expense of the undertaking on the routes which offer the greatest facilities.

"Measures may have been already executed or be in progress to acquire the requisite knowledge. You will inquire particularly as to what has been done or may have been designed by Spain or either of the new States, and obtain all other information that may be within your reach, to solve this interesting problem." * * *

In 1828, Bolivar, President of the Republic of New Granada, gave to Lloyd and Falcmar a commission with a view to construct a roadway between the two oceans. The next year, the King of the Netherlands, in behalf of a private company, made arrangements with Central America for the cutting of a canal, "to be opened on the same terms to all nations."

On the 5th of March, 1835, the Senate of the United States adopted a resolution requesting the President to open negotiations with other nations, and particularly with the governments of Central America and New Granada, with the view of protecting by treaty stipulations, either individuals or companies who should undertake to open communication between

[1] House Reports, 30th Cong., 2d Sess., No. 145, p. 244.

the Atlantic and Pacific oceans; and insuring "the free and equal navigation of the canal by all nations." Similar resolutions were adopted by Congress in 1839. Charles Biddle and John L. Stephens were successively commissioned agents by Presidents Jackson and Van Buren between the years 1836 and 1839, but with no permanent results. Stephens reported in favor of the Nicaragua route.[1] On the 8th of January, 1845, the government of Nicaragua gave Prince Louis Napoleon Bonaparte, then a prisoner in the fortress of Ham, power to organize a company for the construction of a new route for the commerce of the world to be called "Le Canale Napoleon de Nicaragua." After the escape of Louis Napoleon from Ham, in the following May, a pamphlet was published at London under his name, entitled "The Canal of Nicaragua, or a Project for the Junction of the Atlantic and Pacific Oceans by means of a Canal."

In concluding a new treaty with New Granada (since 1862, the United States of Colombia), December 12, 1846, the government of the United States succeeded in introducing an article (the 35th) giving effect to the previous resolutions of Congress.[2]

Although England had taken no active part in the projects for the construction of a Central American canal, she was not an uninterested spectator of what was taking place there. In 1841, the English Government sent a ship of war to San Juan del Norte, at the mouth of the San Juan river, to announce the protection of England over the lands of the Mosquito King, her ally, and to erect the Mosquito flag. In 1847, the Nicaraguans were driven away from San Juan del Norte, and the name of the town was changed to Grey Town.[3] In giving instructions to Mr. Hise, soon after this event Mr. Buchanan, Secretary of State, said:

"The object of Great Britain in this seizure is evident from the policy which she has uniformly pursued throughout her history,

[1] H. R. 30th Cong., 2d Sess., No. 145. Squier's Nicaragua; John L. Stephens: Incidents of Travel in Central America.

[2] *Supra*, p. 183.

[3] British Accounts and Papers, Vol. 65, Mosquito Correspondence; Ex. Doc. No. 75, Vol. X., 31st Cong., 1st Sess. pp. 1-91, 118; Senate Ex. Doc. No. 194, 47th Cong., 1st Sess., p. 111.

of seizing upon every available commercial point in the world whenever circumstances have placed it in her power. Her purpose probably is to obtain control of the route for a railroad or canal between the Atlantic and Pacific Oceans by way of Lake Nicaragua. * * * The government of the United States has not yet determined what course it will pursue in regard to the encroachments of the British Government." * * *

"The independence as well as the interests of the nations on this continent require that they should maintain an American system of policy entirely distinct from that which prevails in Europe. To suffer any interference on the part of the European Governments with the domestic concerns of the American Republics, and to permit them to establish new colonies upon this continent, would be to jeopard their independence and ruin their interests. These truths ought everywhere throughout this continent to be impressed upon the public mind; but what can the United States do to resist such European interference whilst the Spanish-American Republics continue to weaken themselves by divisions and civil war, and deprive themselves of doing anything for their own protection." [1]

The acquisition of California by the United States, in 1848, and the subsequent discovery of gold in that territory gave an increased interest to the projects for constructing a water-way through the Central American Isthmus. In this year, 1848, Aspinwall, Stephens and others obtained from the government of New Granada the concession of the way for a railway across the Isthmus of Panama. This road was finished and opened to traffic in 1855. On the 27th day of August, 1849, Cornelius Vanderbilt, Joseph L. White and others formed at New York a company called *The American, Atlantic and Pacific Company*, to whom the government of Nicaragua granted the right to construct a ship canal across the territory of that State.[2]

At about the same time — June 21, 1849 — Mr. Hise, who had been sent to Central America as Chargé d' Affaires, concluded a treaty with Nicaragua, but without the authority of his

[1] Wharton's Digest of International Law, I. 287-288.

[2] Correspondence relating to proposed Interoceanic Canal, p. 195. This volume of correspondence published by the government in 1885, is a reprint of Senate Ex. Docs. No. 112, 46th Cong., 2d Sess.; No. 194, 47th Cong., 1st Sess., and No. 26, 48th Cong., 1st Sess.

government, by which the United States were to exercise exclusive jurisdiction over any route through the territory of that State.[1]

The Hise treaty was not acceptable to President Taylor, and was not submitted to the Senate; though it was held for some time as a means of influencing the policy of England.

At this time the Nicaragua route was thought to be the most feasible one for a ship canal; but an obstacle now presented itself in the fact that the mouth of the San Juan river, and hence the eastern terminus of the canal, was under the dominion of England. England had, moreover, a settlement on the mainland further to the north, called the Belize, or British Honduras, and she claimed the Bay Islands, situated in the Bay of Honduras as dependencies of Belize.

The government of the United States, alarmed at this preponderance of British influence in Central America, cast about for the means of counteracting it. To oust England from her strong position by force was felt to be much too grave an undertaking, even were the United States disposed to attempt it. But the American statesmen of that day were, as a rule, only intent on securing a free transit across the isthmus not under the exclusive control of any European nation. They resolved, therefore, upon a peaceful and conciliatory policy; if England could not be got rid of, yet she might consent to act in conjunction with the United States in guaranteeing the proposed isthmus transit. Under instructions from Mr. Clayton, Mr. W. C. Rives, who was on his way to Paris, had an interview with Lord Palmerston, in which Mr. Rives said to him with reference to the British claim of jurisdiction over the Mosquitos:—

"That the United States had no disposition to intermeddle in any pragmatical spirit, or with views in the slightest degree unfriendly to Great Britain, with that question, but they were necessarily parties to it in their own right; that citizens of the United States had entered into a contract (the Hise treaty) with the State of Nicaragua to open, on certain conditions, a communication between the Atlantic and Pacific Oceans by the river San Juan and the Nicaragua Lake; that the Government of the

[1] Correspondence relating to proposed Interoceanic Canal, p. 94.

United States, after the most careful investigation of the subject, had come undoubtingly to the conclusion that upon both legal and historical grounds, the State of Nicaragua was the true territorial sovereign of the river San Juan as well as of the Nicaragua Lake, and that it was, therefore, bound to give its countenance and support, by all proper and reasonable means, to rights lawfully derived by their citizens under a grant from that sovereign; that the United States sought no exclusive privilege or preferential right of any kind in regard to the proposed communication, and their sincere wish, if it should be found practicable, was to see it dedicated to the common use of all nations on the most liberal terms, and a footing of perfect equality for all, securing it beforehand, by proper stipulations against unreasonable and oppressive exactions for the use of it, either from the States through whose territories it should pass, or the individuals or companies who might be authorized to construct it; that the United States would not, if they could, obtain any exclusive right or privilege in a great highway, which naturally belonged to all mankind, for they well knew that the possession of any such privilege would expose them to inevitable jealousies and probable controversies which would make it infinitely more costly than advantageous; that while they aimed at no exclusive privilege for themselves they could never consent to see so important a communication fall under the exclusive control of any other great commercial power; that we were far from imputing to Her Britannic Majesty's Government any views of that kind, but Mosquito possession at the mouth of the San Juan could be considered in no other light than British possession, and his lordship would readily comprehend that such a state of things, so long as it was continued, must necessarily give rise to dissatisfaction and distrust on the part of other commercial powers. Would it not, then, be wise, I said to Lord Palmerston, that Great Britain and the United States should come to a frank and manly understanding with each other and unite their influence for the accomplishment of an object of the highest importance to both of them as well as the rest of the world, instead of hazarding the final loss of so great an object by jarring and divided councils."[1] * * *

In giving instructions to Abbott Lawrence, the new minister to England, Mr. Clayton said, October 20, 1849:

[1] Rives to Clayton, September 25, 1849, correspondence in relation to the proposed canal, p. 11.

"If, however, the British Government shall reject these overtures on our part, and shall refuse to co-operate with us in the generous and philanthropic scheme of rendering the interoceanic communication by the way of the port and river San Juan, free to all nations upon the same terms, we shall deem ourselves justified in protecting our interests independently of her aid, and despite her opposition or hostility.

"With a view to this alternative, we have a treaty with the State of Nicaragua, a copy of which has been sent to you, and the stipulations of which you should unreservedly impart to Lord Palmerston.

"You will inform him, however, that this treaty was concluded without a power or instructions from this government; that the President had no knowledge of its existence or of the intention to form it until it was presented to him by Mr. Hise, our late charge d'affaires to Guatemala, about the first of September last; and that consequently we are not bound to ratify it, and will take no step for that purpose if we can, by arrangements with the British Government, place our interest upon a just and satisfactory foundation. But if our efforts for this end should be abortive, the President will not hesitate to submit this or some other treaty which may be concluded by the present charge d'affaires to Guatemala to the Senate of the United States for their advice and consent, with a view to its ratification, and if that enlightened body should approve it, he also will give it his hearty sanction, and will exert all his constitutional power to execute its provisions in good faith, a determination in which he may confidently count upon the good will of the people of the United States."[1] * * *

The English government was invited, through Mr. Lawrence, to join the United States in the protectorate of the Panama route, as set forth in the 35th article of the treaty of 1846 with New Granada; and also to enter into a treaty with Nicaragua similar to that negotiated by Mr. Hise which was then in the hands of the President. The condition attached to this proposal was, however, that the Mosquito protectorate should be withdrawn by England. In the event of this proposal not being accepted, it was further intimated, probably as a mild threat, that the Hise treaty would be submitted to the Senate for its approbation. The subsequent negotiations in

[1] Rives to Clayton, September 25, 1849, p. 12.

regard to this question were transferred to Washington, and carried on by Mr. Clayton, Secretary of State, and Sir Henry Lytton-Bulwer, the English minister at Washington. The result was a direct treaty between the two parties, signed April 19, 1850, and since known as the Clayton-Bulwer Treaty.[1]

At the time of the execution of this treaty, England claimed, as we have seen, dominion over (1) the Mosquito coast, (2) British Honduras, (3) the Bay Islands. Before the final exchange of ratifications of the treaty, Sir H. L. Bulwer filed a paper at the State Department at Washington declaring that "Her Majesty does not undertand the engagements of that convention to apply to Her Majesty's settlement at Honduras, or to its dependencies."

Mr. Clayton answered, in a note of July 4, acknowledging that he "understood British Honduras was not embraced in the treaty of the 19th day of April last, but at the same time declining to affirm or deny the British title in their settlement or its alleged dependencies." He said further, "The consent of the Senate was not required, and the treaty was ratified as it stood when it was made."

Before answering Sir H. L. Bulwer on this point, Mr. Clayton had had the following correspondence with the chairman of the Senate Committee of Foreign Relations:

"July 4, 1850.

"DEAR SIR,—I am this morning writing to Sir H. L. Bulwer, and while about to decline altering the treaty at the time of exchanging ratifications, I wish to leave no room for a charge of duplicity against our government, such as that we now pretend that Central America in the treaty includes British Honduras.

"I shall therefore say to him, in effect, that such construction was not in the contemplation of the negotiators or the Senate at the time of the confirmation. May I have your permission to add that the true understanding was explained by you, as Chairman of Foreign Relations, to the Senate, before the vote was taken on the treaty? I think it due to frankness on our part.

"Very truly yours,

"JOHN M. CLAYTON.

"To HON. W. R. KING, *U. S. Senate.*"

"July 4, 1850.

"MY DEAR SIR,—*The Senate perfectly understood that the treaty*

[1] *Supra*, p. 86.

did not include British Honduras. Frankness becomes our government, but you should be careful not to use any expression which would seem to recognize the right of England to any portion of Honduras.

"Faithfully your obedient servant,

"W. R. KING.

"To HON. JOHN M. CLAYTON, *Secretary of State.*"

That British Honduras was not included in the stipulations of the treaty was not disputed at that day. An official exposition of the treaty appeared in the "National Intelligencer," on the 8th of July, in which it was asserted that "the British title to the Belize the treaty does not in any manner recognize; nor does it deny it, or meddle with it. That settlement remains, in that particular, as it stood previously to the treaty." And President Fillmore said in a communication to Congress on the 14th of July, that "the British title to British Honduras stands precisely as it stood before the treaty."[1]

England then renounced her dominion over Greytown, but continued to exercise a protectorate over the Mosquito Indians; and shortly after the ratification of the treaty, proceeded to erect the Bay Islands into a separate colony. This, the United States contended, was a direct violation of the stipulations of the treaty; and immediately thereupon a controversy arose in respect of its interpretation. The British government took the position that the first article related only to future acts, and did not embrace places in their possession at the time the treaty was made. This construction was rejected by the United States; they were willing to admit the British construction in the case of the Belize, provided the boundary should be satisfactorily settled; but as to the Mosquito coast and the Bay Islands, such construction would defeat the very object of the treaty.

Secretary Marcy, in a despatch to Borland, December 30, 1853, said:

"In relation to the Clayton and Bulwer treaty,* * * I have only to remark that this government considers it a subsisting con-

[1] Seward's Works, I., 384, 385.

tract, and feels bound to observe its stipulations so far as by fair construction they impose obligations upon it.* * *

"So far as respects your mission, you will regard it as meaning what the American negotiator intended when he entered into it, and what the Senate must have understood it to mean when it was ratified, viz.: that by it Great Britain came under engagements to the United States to recede from her asserted protectorate of the Mosquito Indians, and to cease to exercise dominion or control in any part of Central America. If she had any colonial possessions therein at the date of the treaty, she was bound to abandon them, and equally bound to abstain from colonial acquisitions in that region.* * *

"It is believed that Great Britain has a qualified right over a tract of country called the Belize, from which she is not ousted by this treaty, because no part of that tract, when restricted to its proper limits, is within the bounds of Central America."[1]* * *

In a letter to Marcy, June 7, 1853, Buchanan wrote:

"Bad as the treaty (the Clayton and Bulwer treaty) is, the President cannot annul it. This would be beyond his power, and the attempt would startle the whole world. In one respect it may be employed to great advantage. The question of the Colony of the Bay of Islands is the dangerous question. It affects the national honor. From all the consideration I can give the subject, the establishment of this colony is a clear violation of the Clayton and Bulwer treaty. Under it we can insist upon the withdrawal of Great Britain from the Bay of Islands. Without it we could only interpose the Monroe Doctrine against this colony, which has never yet been sanctioned by Congress, though as an individual citizen of the United States, I would fight for it to-morrow, so far as all North America is concerned, and would do my best to maintain it throughout South America."[2]

Buchanan thought that "Mr. Clayton and Mr. Webster have involved our relations with England in serious difficulties by departing from the Monroe Doctrine."[3]

One of the chief objects of Buchanan's mission to England,

[1] Correspondence, etc., p. 247. The term Central America is here used in a political sense, meaning the territory comprised in the former Central American Confederacy, but now broken up into five independent republics.

[2] Curtis' Buchanan, II., 82. [3] *Ib.*, p. 73.

in 1853, was to settle the Central American question, but he was unable to accomplish anything. An attempt was made, in 1856 to settle the matter by a new treaty—known as the Clarendon-Dallas treaty,—but it failed of ratification on the part of England by reason of an amendment added to it by the Senate, by which the Bay Islands were given absolutely to the Republic of Honduras. England had claimed these islands, but with hardly a semblance of reason, as dependencies of the Belize.

On the failure of the Clarendon-Dallas treaty, there remained two possibe modes of proceeding; namely, by reference to arbitration, or by the absolute abrogation of the treaty of 1850. In the opinion of the United States, said Mr. Cass, the subject did not admit of reference to arbitration. And as to the abrogation of the Clayton-Bulwer treaty, the United States would consent to this only on condition of making some other settlement of the question. For, in the event of abrogation, England insisted on resuming her former protensions in Central America. Mr. Clayton said, "The abrogation of the treaty restores the British protectorate with renewed vigor; and, unless immediately after it shall be annulled we shall be prepared to attack her in Central America, she will reassert her title so effectually that in one year the whole isthmus will be under her influence."[1] In the meantime England sent out, in 1857, a commission—Sir William Gore Ausley—to negotiate treaties with the Central-American states, which should be in accordance with the Clayton-Bulwer treaty, and perhaps satisfy the American construction of the treaty. Mr. Cass assured the English government that the United States would be satisfied if the proposed treaties should adjust the disputes in regard to the Mosquito protectorate, the Bay Islands, and the boundary of Belize, "in accordance with the general tenor of the American interpretation of the treaty." This plan proved successful. Treaties were concluded (1) with Guatemala in 1859, by which the boundaries of Belize were determined; (2) with Honduras, in the same year, by which the Bay Islands were given up to that state; (3) with Nicaragua in 1860 (also by that with Honduras), by which the British protectorate over the Mosquitos was withdrawn.

[1] Appendix to Cong. Globe, 1855–56, p. 441.

It will be seen that the principles involved in these treaties coincide almost exactly with the American construction, and with the Senate amendments to the Clarendon-Dallas treaty. England conceded in 1860 what she flatly refused in 1856. The United States thus gained all they had contended for. Mr. Buchanan said in his annual message of December, 1860, "The discordant construction of the Clayton-Bulwer treaty between the two governments has resulted in a final settlement entirely satisfactory to this government." Mr. Buchanan afterwards wrote, that, at the close of "his administration, no European colony existed on the American continent, except such as had been established before the Monroe Doctrine was announced or had been formed out of territory then belonging to a European power." [1]

Thus, in 1860, the Clayton-Bulwer treaty was restored to its full original authority. But the primary object for which it was made—the construction of a canal—still remained unaccomplished. The American, Atlantic and Pacific Company had caused a careful survey of the Nicaragua route to be made in 1851 by Col. O. W. Childs; and had organized the "Accessory Transit Company" for the conveyance of passengers across the isthmus by way of the San Juan river and Lake Nicaragua. Work on the canal, however, was not begun; and for this reason, ostensibly, but really on account of the Walker filli-bustering expedition to Central America, the government of Nicaragua revoked the charter of the Canal Company; and in 1858 granted a concession to Felix Belly of Paris and a company to be organized by him.

In a letter to Lamar, July 25, 1858, Mr. Cass, Secretary of State, criticises the summary proceedings of Nicaragua in annulling the privileges of the American Company, and objects to some of the privileges granted to Belly.[2]

The breaking out of the Civil War in 1861 arrested further action with reference to an isthmian canal on the part of Americans. The Clayton-Bulwer treaty continued, nevertheless, to be considered as binding the two States. In a despatch to Mr. Adams, in 1866, Mr. Seward said that, "supposing the

[1] Buchanan's Administration, p. 284.

[2] Correspondence relating to proposed canal, p. 281. And see *Ib.*, p. 250, for the decree annulling the American charter.

canal should never be built, it may be a question whether the renunciatory clauses of the treaty are to have perpetual obligations. Technically speaking, this question might be decided in the negative. Still, so long as it should remain a question, it would not comport with good faith for either party to do anything which might be deemed contrary to even the spirit of the treaty." (Correspondence, etc., p. 304.)

So, Mr. Fish, in a despatch of April 26, 1872, to Mr. Schenck, in regard to a rumor of British encroachment upon the territory of Guatemala, said: "You will then (if the rumor prove to be true) formally remonstrate against any trespass by British subjects, with the connivance of their government upon the territory of Guatemala, as an infringement of the Clayton-Bulwer treaty, which will be very unacceptable in this country." (Correspondence, etc., p. 312.)

Again, on March 4, 1880, Mr. Evarts, writing to Mr. Logan, then minister to Central America, in regard to a rumor that England was about to acquire the Bay Islands by purchase, said, "It seems unquestionable that the Clayton-Bulwer treaty precludes the acquisition of those islands by Great Britain." (Wharton's Digest, II., 209.)

During the civil war, Mr. Seward refrained from asserting any exclusive authority in Central America; but after the close of that war, and after the French had been forced out of Mexico, he would seem to have taken a higher tone in this respect. "The United States," he said, "would not permit a public enemy of the American continent the use or advantages of a work executed by nations of the new world." In concluding a treaty[1] with Nicaragua in 1867, however, there is no attempt to acquire exclusive control of any future canal. But in a new treaty negotiated with Colombia (formerly New Granada), in 1869, almost absolute control of any canal at Panama was reserved to the United States.[2] This treaty was ratified neither by Colombia nor by the Senate of the United States. A similar treaty negotiated with Colombia the next year by Mr. Fish met a like fate.[3]

During the years from 1872 to 1880, almost every possible route across the Central-American Isthmus was carefully sur-

[1] *Supra*, p. 197. [2] Correspondence relating to proposed canal, p. 36.
[3] *Ib.*, p. 40.

veyed by officers and engineers of the United States Navy; but nothing was done towards the actual construction of a canal. In the meantime, Lieutenant Lucien Napoleon Bonaparte Wyse, and others, had explored the Panama route, and on the 18th of May, 1878, obtained from the Colombia government a charter for the company which he represented, of which General Türr was president, granting the exclusive privilege of excavating a maritime canal between the Atlantic and Pacific Oceans across the territory of that State."[1]

By the stipulations of this contract, or treaty, the proposed canal was to be absolutely neutral and open to the vessels of all nations on an equal footing, with the one exception of ships of war of nations not joining in the guaranty of the neutrality of the canal and the sovereignty of Colombia over this part of the isthmus.

A contract for the purchase of the Panama railroad was also procured by Mr. Wyse on the 24th of February, 1879.

In order to give the necessary éclat to the enterprise, M. Ferdinand de Lesseps was induced to assume the leadership in it. A Congress composed of 135 delegates was called to consider the question of the canal, and met at Paris in May, 1879. The United States were here represented by eleven delegates, among whom were Admiral Ammen, Mr. Menocal and Commander Selfridge, the first two being sent by the government. These three men were probably the best living authorities respecting the isthmus routes. But the whole matter had been settled beforehand by the interested parties, so that the opinion of Ammen and Menocal was hardly listened to; and the majority of the Congress adopted the visionary scheme of Wyse and his fellow explorer, Reclus, which was to cut a sea-level canal between Colon and Panama. The subsequent history of this scheme is too well-known to need recounting here.

The experience gained by this attempt has proved conclusively the correctness of the opinions of the American engineers, that a sea-level canal at Panama was quite impracticable. The undertaking was blindly begun and blindly persisted

[1] L. N. B. Wyse; Le Canal de Panama, p. 371.

in, until the sum of $270,000,000 was recklessly sunk in the enterprise, and without accomplishing any material results.

The government of the United States now took alarm, and was impressed with the necessity of asserting its authority in respect of the project. In both Houses of Congress resolutions were introduced reaffirming the principles of the Monroe Doctrine, and declaring that the United States must exercise such control over any interoceanic canal as their safety and prosperity demanded. President Hayes, in a special message of March 8, 1880, said:—

"That the policy of this country is a canal under American control. The United States cannot consent to the surrender of this control to any European power, or to any combination of European powers.* * * An interoceanic canal across the American Isthmus will essentially change the geographical relations between the Atlantic and Pacific coasts of the United States, and between the United States and the rest of the world. It will be the great ocean thoroughfare between our Atlantic and our Pacific shores, and *virtually a part of the coast line* of the United States. Our merely commercial interest in it is greater than that of all other countries, while its relations to our power and prosperity as a nation, to our means of defense, our unity, peace, and safety, are matters of paramount concern to the people of the United States. No other great power would, under similar circumstances, fail to assert a rightful control over a work so closely and vitally affecting its interest and welfare."[1]

Mr. Evarts protested against the action of Colombia, in granting a concession to a French company, and proposed to the Colombian minister, General Santo Domingo Vila, a new treaty, supplementary to that of 1846, by the terms of which "all concessions and privileges granted or to be granted by the United States of Colombia with the view of assuring the construction of an interoceanic canal across the Isthmus of Panama are and shall be subject to the rights acquired by the United States of America by virtue of the guarantee given by them in the thirty-fifth article of the Treaty of 1846," and that no concessions should be granted by Colombia without the consent of the

[1] Correspondence, etc., p. 312.

United States. And, further, that the United States should be permitted to establish and occupy any fortifications at the entrance of the canal which should be deemed necessary. General Vila replied, in effect, on the 10th of February, 1881, that to accept the proposals of Mr. Evarts would be a serious blow to the independence of Colombia as a sovereign State, and that he could not accept the idea, even as a simple basis of discussion. A convention, in a modified form, negotiated immediately afterwards by Mr. Trescot and General Vila (February 17), was rejected by the Colombian Senate.[1]

It was left, however, to the successors of Mr. Evarts in the State department to sustain by argument the position of the United States in respect to the canal and the Clayton-Bulwer treaty. In a despatch to Mr. J. R. Lowell, minister at London, dated June 24, 1881, Mr. Blaine called attention to the treaty of guarantee of 1846 between Colombia and the United States, and said that, "in the judgment of the President, this guarantee, given by the United States of America, does not require reinforcement, or accession, or assent from any other power." No mention was made in this despatch of the Clayton-Bulwer treaty; but in a subsequent despatch to Mr. Lowell, of the 19th of November, 1881, Mr. Blaine discussed that treaty at great length. "This convention," he declared, "was made more than thirty years ago under exceptional and extraordinary conditions which have long since ceased to exist,—conditions which, at best, were temporary in their nature, and which can never be reproduced." The remarkable development of the United States since that time, Mr. Blaine believed has created new duties upon this government, the complete discharge of which requires some essential modifications of the Clayton-Bulwer treaty. For although the military power of the United States is without limit, and, in any conflict on the American continent, altogether irresistible, this treaty commands the government not to use a single regiment of troops to protect its interests in connection with the interoceanic canal, but to surrender the transit to the guardianship and control of the British navy. To counterbalance the preponderance of the British navy, we should be permitted to fortify and control the canal in order to protect

[1] Wyse : Canal de Panama, p. 282.

our Pacific coast in the event of war. And a comparison is made with England's Indian possessions and the Suez canal. As to a general neutralization of the canal "on paper," Mr. Blaine believed it would not suffice to preserve its neutrality in time of hostilities. "The first sound of cannon, in a general European war, would, in all probability, annul the treaty of neutrality." The only exclusive mode of preserving the neutrality of the canal is to "place it under the control of that government least likely to be engaged in war, and able, in any and every event, to enforce the guardianship which she shall assume." Besides, it was contended, we have by right and long-established claim priority on the American continent.

For these reasons Mr. Blaine proposed a modification of the Clayton-Bulwer treaty, so as to permit the United States to fortify the canal, while retaining the prohibition regarding the acquisition of territory in Central America. The eighth article, by which the two governments agree to protect the routes by way of Tehuantepec or Panama, should be considered obsolete; while that looking to the establishment of a free port at either end of the canal, and a neutralized portion of sea, should be allowed to stand.

Mr. Frelinghuysen, who succeeded Mr. Blaine in the State Department in December, 1881, reiterated the arguments of his predecessors as to the necessity of the American control of the canal; and went still further, in his attempt to prove that the Clayton-Bulwer treaty was null and void by the acts of England, or, at least, was voidable at the pleasure of the United States. The primary object of the treaty, said Mr. Frelinghuysen, was the construction of a canal by the Nicaragua route, and the dispossession of England of her settlements in Central America. But neither of these objects was accomplished; the canal was not made, and England continued to occupy British Honduras. If "Great Britain has violated, and continues to violate that provision, the treaty is, of course, voidable at the pleasure of the United States." Again, the parties to the treaty "anticipated that a canal by the *Nicaragua route* was to be at once commenced, * * * and finished with all possible speed by American and British capital under the impulse of the joint protectorate." And it was further the opinion of Mr. Frelinghuysen that the agreement had reference to the concession of

the State of Nicaragua to the American company organized in 1849, and to no other. He then intimated that the British capital was not forthcoming; and the concession was withdrawn, and therefore the treaty became voidable. The sixth article, which contemplated the extension of the agreement to other nations, should be considered as lapsed by reason of the failure to construct the canal to which it referred, and also because no joint protectorate for any canal across the isthmus is required. As to the eighth article, which extends the provisions of the treaty to the Panama and Tehuantepec routes, Mr. Frelinghuysen said our protectorate over Panama, by the treaty of Colombia of 1846, was exclusive in its character while it existed, which treaty obliges the United States to afford the sole protectorate of any transit across Panama. But at all events, the fact that England has concurred in the protectorate of the railway on this route by the United States has relieved the last-named government from any obligations to permit her to join in the guarantee.

Mr. Frelinghuysen found another reason for annulling the Clayton-Bulwer treaty in the fact that in 1850, when the treaty was made, the United States were poor in money; they could not furnish the necessary capital to construct the canal, and were willing, therefore, in order to secure such capital, to surrender some of their exclusive privileges. But that now the people of the United States had abundance of surplus capital for such enterprises, and had no need to call upon foreign capitalists.

Finally, the Clayton-Bulwer treaty was said to be in conflict with the Monroe Doctrine.

These arguments of Blaine, Frelinghuysen, and others, touching the Clayton-Bulwer treaty, may be reduced to three general propositions; namely, first, that the treaty is void or voidable by reason of the failure of England to carry out her part of the agreement; second, that the change of conditions since 1850 has worked a virtual abrogation, or, at least, an essential modification of the treaty; and third, that the treaty is in conflict with the principles of the Monroe Doctrine. All these positions were denied by Lord Granville, English foreign secretary; and they have been more recently criticised by Mr. T. J. Lawrence, in his volume of Essays on International Law.

The correspondence between the two governments with reference to the Clayton-Bulwer treaty was dropped in 1882, and has not been resumed.

On the first of December, 1884, Mr. Frelinghuysen negotiated a treaty with Nicaragua, by the provisions of which a canal was to be built by the United States, and to be owned jointly by the two States, and the United States were to "protect" the integrity of the territory of Nicaragua. A strip of territory two and one-half English miles in width, along the canal, and a strip of the same width around the southern end of the lake were to be set aside and owned by the contracting parties.

When Mr. Cleveland became President, this treaty was still before the Senate unratified; and early in his administration, he withdrew it from the Senate, for further consideration, and it was not resubmitted to that body.

In his first annual message to Congress, December 8, 1885, President Cleveland said in respect to this subject:

"My immediate predecessor caused to be negotiated with Nicaragua a treaty for the construction, by and at the sole cost of the United States, of a canal through Nicaragua territory, and laid it before the Senate. Pending the action of that body thereon, I withdrew the treaty for re-examination. Attentive consideration of its provisions leads me to withhold it from re-submission to the Senate.

"Maintaining, as I do, the tenets of a line of precedents from Washington's day, which proscribe entangling alliances with foreign States, I do not favor a policy of acquisition of new and distant territory or the incorporation of remote interests with our own.

"The laws of progress are vital and organic, and we must be conscious of that irresistible tide of commercial expansion which, as the concomitant of our active civilization, day by day, is being urged onward by those increasing facilities of production, transportation, and communication to which steam and electricity have given birth; but our duty in the present instructs us to address ourselves mainly to the development of the vast resources of the great area committed to our charge, and to the cultivation of the arts of peace within our own borders, though jealously alert in preventing the American hemisphere from being involved in the political problems and complications of distant governments. Therefore, I am unable to recommend propositions involving par-

amount privileges of ownership or right outside of our own territory, when coupled with absolute and unlimited engagements to defend the territorial integrity of the State where such interests lie. While the general project of connecting the two oceans by means of a canal, is to be encouraged, I am of opinion that any scheme to that end to be considered with favor should be free from the features alluded to. * * *

"Whatever highway may be constructed across the barrier dividing the two greatest maritime areas of the world, must be for the world's benefit, a trust for mankind, to be removed from the chance of domination by any single power, nor become a point of invitation for hostilities or a prize for warlike ambition. An engagement combining the construction, ownership, and operation of such a work by this government, with an offensive and defensive alliance for its protection, with the foreign State whose responsibilities and rights we would share, is, in my judgment, inconsistent with such dedication to universal and neutral use, and would, moreover, entail measures for its realization beyond the scope of our national polity or present means.

"The lapse of years has abundantly confirmed the wisdom and foresight of those earlier administrations which, long before the conditions of maritime intercourse were changed and enlarged by the progress of the age, proclaimed the vital need of interoceanic transit across the American Isthmus, and consecrated it in advance to the common use of mankind, by their positive declarations and through the formal obligation of treaties. Toward such realization, the efforts of my administration will be applied, ever having in mind the principles on which it must rest, and which were declared in no uncertain tones by Mr. Cass, who, while Secretary of State, in 1858, announced that 'what the United States want in Central America, next to the happiness of its people, is the security and neutrality of the interoceanic routes which lead through it.' * * *

"These suggestions [as to transcontinental railways] may serve to emphasize what I have already said on the score of the necessity of a neutralization of any interoceanic transit; and this can only be accomplished by making the uses of the route open to all nations and subject to the ambitious and warlike necessities of none."[1]

Before this treaty was negotiated, a movement had been set

[1] Foreign Relations, 1885, p. v.

on foot to construct a canal through Nicaragua through private enterprise. As early as 1880 an association was formed, composed of leading men, mostly of New York, and a concession was obtained from the government of Nicaragua; but owing to opposition and delays, the concession finally lapsed in 1884. On the failure of the treaty, mentioned above, this canal association was revived. On the 20th of October, 1886, a meeting of prominent men was held, and an organization was formally completed on the 3d of December. Mr. A. G. Menocal, who had been the active agent in the affairs of the former association, was again dispatched to Nicaragua, and succeeded in obtaining a new concession, which was ratified by the government of that State on the 24th of April, 1887.

On the 10th of January, 1888, Senator Edmunds introduced a bill in the Senate for the incorporation of the Maritime Canal Company of Nicaragua; it was not till the 20th of February, 1889, however, that it passed both Houses and became a law. The association had, in the meantime, caused to be incorporated a Construction Company, under whose direction the final surveys and the preliminary work were carried on.

On the 10th of January, 1891, a bill was introduced in the Senate by Senator Sherman, empowering the United States to guarantee the principal and interest at four per cent. per annum, of an issue of $100,000,000 of canal company bonds to be issued for construction purposes. The President of the United States was empowered by the bill to name six of the directors of the company, and $70,000,000 of the capital stock of the company was to be placed in the custody of the Secretary of Treasury, as a pledge and security for the repayment to the United States of any amounts advanced in pursuance of the guarantee. The duty was to be conferred upon the Secretary of the Treasury, to vote upon the stock at his discretion, and an option was reserved to the United States to purchase the same at any time before the maturity of the bonds. This bill, although debated, did not come up for final action; and in January, 1894, Senator Morgan introduced a similar bill.

Since the failure of the Panama project, and scandal connected therewith, and perhaps also on account of a more or less widespread distrust in this country of "stock-jobbing" schemes, it has been difficult to inspire confidence in this Panama company

sufficient to induce investors to take its bonds. Hence we have these pressing appeals to the government of the United States to shoulder the burden of the undertaking. It is set forth as the patriotic duty of Americans to construct the canal in order to prevent its falling into the hands of Europeans.

It will be noted that, during the period from 1825 to 1880, American Statesmen of all parties were for the most part intent only on procuring the construction of an isthmian canal which should be free to all the world, and neutralized by the joint guarantee of all; but since then, with the exception of Mr. Cleveland's administration, the government of the United States has constantly insisted upon the exclusive control of such canal by the United States. We shall see that this is but one part in a greater American system which appears generally in our foreign policy.[1]

YUCATAN, 1848.

In 1848, the white population of Yucatan, a province of Mexico, called upon the United States for aid against the Indians, who were waging war against them; and offered, if aid should be granted, to transfer the dominion of the peninsula to the United States. It was stated that similar appeals had been made to the Spanish and English governments.

In a special message on the 29th of April, 1848, President Polk said:—

[1] See, on the subject of the Isthmian Canal and the the Clayton-Bulwer treaty: "Correspondence in relation to the Proposed Inter-oceanic Canal, the Clayton-Bulwer Treaty, and the Monroe Doctrine," being a reprint of Sen. Ex. Doc. No. 112, 46th Cong. 2d sess; No. 194, 47th Cong., 1st sess.; and No. 26, 48th Cong., 1st sess.; "The Panama Canal," by J. C. Rodrigues, L. L. B. 1885; "Le Canal de Panama," by Lucien N. B. Wyse, 1886; Wharton's Digest of International Law, II., pp. 184–244; J. F. Rhodes' "History of the United States from the Compromise of 1850," p. 199; Tucker's "Monroe Doctrine;" Cinq Aus à Panama, par Wolfred Nelson, 1890; Curtis' Buchanan, II., 76 *et seq.;* Seward's Works, I., 385, V., 5, 33; "The Inter-oceanic Canal of Nicaragua," published by the Canal Construction Company, 1891; Debate in the Senate, 1856, Cong. Globe, 1st sess. 34th Cong.

"While it is not my purpose to recommend the adoption of any measure with a view to the acquisition of the 'dominion and sovereignty' over Yucatan, yet, according to our established policy, we could not consent to a transfer of this 'dominion and sovereignty' to either Spain, Great Britain, or any other European power. In the language of President Monroe, in his message of December, 1823, 'we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.' In my annual message of December, 1845, I declared that near a quarter of a century ago the principle was distinctly announced to the world, in the annual message of one of my predecessors, that the American continents, * * * are henceforth not to be considered as subjects for future colonization by any European power. This principle will apply with greatly increased force, should any European power attempt to establish any new colony in North America. In the existing circumstances of the world, the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr. Monroe, and to state my cordial concurrence in its wisdom and sound policy."

As a member of the House of Representatives, in 1826, Mr. Polk had been one of the most strenuous opponents of the Panama Mission. "We are," he then said, "about to depart from our ancient and plain republican simplicity, and to become a great and splendid government; new projects are set on foot; we are called upon by the President to change the whole policy of the country, as adopted by our fathers, and so happily pursued by their posterity down to the present period."

In 1845, Mr. Polk, as President, inaugurated a war of conquest; and at the date of his message (quoted above), the United States had just wrested from their southern neighbor the provinces of California and New Mexico. And now he proposed to proceed in this policy, and annex Yucatan.

A bill to enable the President to take temporary military possession of that province was introduced in the Senate; but before any definite conclusion had been come to, news was received that the whites and Indians of Yucatan had settled their differences by treaty.

The most noteworthy feature of the debate in this Yucatan

bill was the speech of Calhoun in opposition, May 15, 1848.[1] As a member of Monroe's Cabinet in 1823, he related his recollections of the circumstances under which the "declaration" was made, and stated his opinion of its meaning and scope. His idea was that the famous declaration was made under circumstances peculiar to that time, and that there was no intention of settling a policy for all future generations. "They were but declarations—nothing more; declarations announcing in a friendly manner to the powers of the world that we should regard certain acts of interposition of the allied powers as dangerous to our peace and safety. * * * We are not to have quoted on us, on every occasion, general declarations to which any and every meaning may be attached. There are cases of interposition where I would resort to the hazard of war with all its calamities. Am I asked for one? I will answer. I designate the case of Cuba." * * *

CUBA.

At the time of the declaration of the Monroe Doctrine in 1823, Spain had virtually lost all her colonies on the continent of America, but there still remained to her the important islands of Cuba and Porto Rico; it was a question, however, whether, in her weakened condition, she would be able to retain them in the war of aggression, commenced against her by France in the spring of 1823. A rumor had indeed reached the United States that France intended to take possession of Cuba. This island lies very near our southern coast and commands the entrance to the Gulf of Mexico; it was natural therefore that the United States should feel a lively interest in its fate. On the 28th of April, 1823, Mr. J. Q. Adams, Secretary of State, wrote to Mr. Nelson, United States minister in Spain, that:—

"In the war between France and Spain, now commencing, other interests, peculiarly ours, will in all probability be deeply involved. Whatever may be the issue of this war as between those two European powers, it may be taken for granted that the dominion of Spain upon the American continents, north and

[1] 4 Calhoun's works, 455; Wharton's Digest, I., 283.

south, is irrevocably gone. But the islands of Cuba and Porto Rico still remain nominally, and so far really, dependent upon her, that she yet possesses the power of transferring her own dominion over them, together with the possession of them, to others. These islands, from their local position, are natural appendages to the North American continent, and one of them (Cuba) almost in sight of our shores, from a multitude of considerations has become an object of transcendent importance to the commercial and political interests of our Union. Its commanding position, with reference to the Gulf of Mexico and the West India seas; the character of its population; its situation midway between our southern coast and the island of San Domingo; its safe and capacious harbor of Havana, fronting a long line of our shores destitute of the same advantage; the nature of its productions and of its wants, furnishing the supplies and needing the returns of a commerce immensely profitable and mutually beneficial, give it an importance in the sum of our national interests with which that of no other foreign territory can be compared, and little inferior to that which binds the different members of this Union together." * * *

Mr. Adams thought that Cuba would, in the course of events, be annexed to the United States, but he believed that we were not yet prepared for the adoption of a policy of annexing territory beyond sea.[1]

The government of the United States felt no immediate concern so long as the island remained in the possession of Spain; but that it should never come under the dominion of any other European power has been the fixed policy of this country from that day to the present time.

On the 17th of October, 1825, Mr. Clay was directed by the President (Mr. Adams) to announce to European governments, by instructions to our ministers, "that the United States, for themselves, desired no change in the political condition of Cuba; that they were satisfied that it should remain open as it now is, to their commerce, and that they could not with indifference see it passing from Spain to any (other) European power." And in instructions to Mr. Brown, minister to France, October 25, 1825, Mr. Clay wrote, "you will now add that we could not consent to the occupation of those islands (Cuba and

[1] Wharton's Digest, I., p. 361.

Porto Rico) by any other European power than Spain under any contingency whatever." [1]

This policy with reference to Cuba was reiterated the next year, as well as in the following administrations of Jackson, Van Buren, and Tyler. In the meantime, however, the development of the contest between the North and the South in respect to slavery had given a new impetus to the desire on the part of the slave-holding states for the extension of slave-territory; and after the annexation of Texas and the conquests made from Mexico, Mr. Polk entered upon active measures for the acquisition of the island of Cuba.

"On the 17th of June, 1848, Buchanan had charged Saunders [minister to Spain] in the name of the President to introduce the matter to the Spanish government, and had authorized him to go as high in his offer as $100,000,000. * * *

"It will be recollected that at one time the warmest patriots and the most sharp-sighted statesmen of the Union had shared these views. But how greatly had the aspect of affairs been altered since then by the development of the slavery question. Assuredly neither Polk nor Buchanan was determined solely by the wish to strengthen and support the tottering power of the slaveholders, but it was equally certain that in pursuing the plan this motive would come into more and more essential prominence. And even were this not the case, the annexation of Cuba would, as a matter of fact, be chiefly beneficial to them. In the north, therefore, the project would be sure to meet with violent opposition, even in circles where the brilliant prize looked most dazzlingly tempting. As long as the island remained unendangered in the possession of so weak a power as Spain, it could not be expected with any certainty that the north, irrespective of the slavery question, could on mature deliberation be won over to the project. Any one who had thoughtfully followed the development of the planter States would have been obliged to recognize, also, that the natural riches of Cuba and the importance of its position for trade and for the control of the surrounding waters, however highly estimated, would be more than counterbalanced by the disadvantages which would result to the Union from the fact that it was a tropical island with a Spanish and colored population." [2]

[1] Wharton's Digest, p. 367.

[2] Von Holst : History of the United States, 1846–1850, p. 441.

The proposition for the cession of Cuba, was rejected by the Spanish government. In instructions to our minister to Spain, August 2, 1849, Mr. Clayton said, "as to the purchase of Cuba from Spain, we do not desire to renew the proposition made by the late administration on this subject. It is understood that the proposition made by our late minister at Madrid, under instructions from this Department, or from the late President of the United States, was considered by the Spanish ministry as a national indignity, and that the sentiment of the ministry was responded to by the Cortes." [1]

During the years 1849 to 1851, inclusive, three expeditions were successively fitted out in the United States, under the command of Narciso Lopez, for the purpose of liberating Cuba. These filibustering expeditions of Lopez as in the case of those of Walker to Central America, elicited the warm sympathy of a large class of the slave-holding South; but they were not favored at the North.[2]

On account of these attempts upon Cuba, supposed to be favored by the government of the United States, England and France, in order to check such movements, proposed in 1852, a tripartite agreement with reference to that island, by those two powers and the United States. This arrangement was to take the form of a treaty, the first article of which was as follows:—

"The high contracting parties hereby severally and collectively disclaim, both now and for hereafter, all intention to obtain possession of the island of Cuba; and they respectively bind themselves to discountenance all attempt to that effect on the part of any power or individuals whatever.

"The high contracting parties declare, severally and collectively, that they will not obtain or maintain, for themselves, or for any one of themselves, any exclusive control over the said island, nor assume nor exercise any dominion over the same."

The government of the United States refused to enter into the proposed agreement, for the reason, in the first place, that "the policy of the United States has uniformly been to avoid

[1] Wharton's Digest, p. 373.

[2] J. F. Rhodes: History of the United States, I., 316–321.

as far as possible alliances or agreements with other states, and to keep itself free from national obligations, except such as affect directly the interests of the United States themselves." Moreover, it was doubtful whether the constitution of the United States authorized the treaty-making power to impose a permanent disability upon the government. Although the President did not covet the acquisition of Cuba for the United States, he at the same time considered the condition of that island as mainly an American question. The proposed convention proceeded on a different principle; it assumed that the United States had no other or greater interest in the question than France or England, whereas it was necessary only to cast one's eye on the map to see how remote were the relations of Europe, and how intimate those of the United States with this island.[1]

In his third annual message, 1852, in speaking of the proposed tripartite convention, President Fillmore said:

"This invitation has been respectfully declined, for reasons which would occupy too much space in this communication to state in detail, but which led me to think that the proposed measure would be of doubtful constitutionality, impolitic, and unavailing. I have, however, in common with several of my predecessors, directed the ministers of France and England to be assured that the United States entertain no designs against Cuba, but that, on the contrary, I should regard its incorporation into the Union at the present time as fraught with serious peril.

"Were this island comparatively destitute of inhabitants, or occupied by a kindred race, I should regard it, if voluntarily conceded by Spain, as a most desirable acquisition; but under existing circumstances I should look upon its incorporation into our Union as a very hazardous measure. It would bring into the confederacy a population of a different national stock, speaking a different language, and not likely to harmonize with the other members. It would probably affect in a prejudical manner the industrial interests of the South; and it might revive those conflicts of opinion which lately shook the Union to its center, and which have been so happily compromised." [2]

[1] Wharton's Digest, p. 562. Letters of Everett, Secretary of State, to Mr. Sartiges, December 1, 1852, and to Lord John Russell, September 17, 1853.

[2] Wharton's Digest, p. 378.

These conservative views of Fillmore formed apparently no part of the policy of the succeeding administration of Franklin Pierce. Buchanan wrote to the President-elect, December 11, 1852, "should you desire to acquire Cuba, the choice of suitable ministers to Spain, Naples, England, and France will be very important." As if in accordance with this advice, Buchanan, who had offered a hundred millions for Cuba, in 1848, was appointed minister to England, Pierre Soulé of Louisiana, who had publicly lauded the expedition of Lopez, was appointed to Spain; and John Y. Mason, of Virginia, a man of the radical slavery school, was sent to France. Marcy, the new Secretary of State, believed that Cuba could be peaceably and honorably acquired; but was opposed to violent measures to that end.[1] Soulé, by his rash proceedings at Madrid, came very near embroiling the two countries in a war, but did not succeed in furthering the plan of the acquisition of Cuba.

In 1854, took place at New Orleans a revival of the filibustering projects of Lopez, this time under the lead of Quitman, a former governor of Mississippi.

The Southern Democrats, too, were clamoring for war at this time, urging the *Black Warrior* affair as a pretext. Marcy, however, backed by the unanimous sentiment of the North, was opposed to war, and carried the day in the cabinet. A proclamation against the Filibusters was issued, and Quitman was subsequently arrested and forced to give bonds that he would observe the neutrality laws.[2]

Under instructions of the administration, the three ministers, Buchanan, Mason and Soulé met at Ostend, October 8, 1854 (and later adjourned to Aix-la-Chapelle), for the purpose of comparing opinions and adopting measures "for perfect concert of action in aid of the negotiations at Madrid," with reference to the acquisition of Cuba.

On the 18th of October a paper was signed by the three ministers, and addressed to Marcy, which is known as the *Ostend Manifesto*. It began by setting forth the advantages which would accrue to the United States by the possession of Cuba, and the unceasing danger which menaced us, while it

[1] Rhodes: History of the United States, I., 393–396, and II., 10–38.
[2] *Ib.* II., 27–38.

remained in the hands of a foreign power. The interest of Spain, moreover, it was asserted, would also "be greatly and essentially promoted," by the sale of the island to the United States.

It was suggested that Spain might employ two-thirds of the purchase money ($120,000,000) in the construction of a system of railroads, and with the remaining forty millions, she might "create a sinking fund which would gradually relieve her from the overwhelming debt now paralyzing her energies." Besides, there was a possibility that Cuba might be wrested from Spain by a successful revolution.

"But if Spain, dead to the voice of her own interest, and actuated by stubborn pride and a false sense of honor, should refuse to sell Cuba to the United States, then the question will arise, what ought to be the course of the American government under such circumstances? Self-preservation is the first law of nature, with States as well as with individuals. All nations have, at different periods, acted upon this maxim. Although it has been made the pretext for committing flagrant injustice, as in the partition of Poland and other similar cases which history records, yet the principle itself, though often abused, has always been recognized.

"The United States have never acquired a foot of territory except by fair purchase, or, as in the case of Texas, upon the free and voluntary application of the people of that independent State, who desired to blend their destinies with our own.

"Even our acquisitions from Mexico are no exception to this rule, because, although we might have claimed them by the right of conquest in a just war, yet we purchased them for what was then considered by both parties a full and ample equivalent.

"Our past history forbids that we should acquire the island of Cuba without the consent of Spain, unless justified by the great law of self-preservation. We must, in any event, preserve our own conscious rectitude and our own self-respect.

"Whilst pursuing this course we can afford to disregard the censures of the world, to which we have been so often and so unjustly exposed.

"After we shall have offered Spain a price for Cuba far beyond its present value, and this shall have been refused, it will then be time to consider the question, does Cuba, in the possession of

Spain, seriously endanger our internal peace and the existence of our cherished Union?

"Should this question be answered in the affirmative, then, by every law, human and divine, we shall be justified in wresting it from Spain if we possess the power; and this upon the very same principle that would justify an individual in tearing down the burning house of his neighbor if there were no other means of preventing the flames from destroying his own home.

"Under such circumstances we ought neither to count the cost nor regard the odds which Spain might enlist against us. We forbear to enter into the question, whether the present condition of the island would justify such a measure? We should, however, be recreant to our duty, be unworthy of our gallant forefathers, and commit base treason against our posterity, should we permit Cuba to be Africanized and become a second St. Domingo, with all its attendant horrors to the white race, and suffer the flames to extend to our own neighboring shores, seriously to endanger or actually to consume the fair fabric of our Union.

"We fear that the course and current of events are rapidly tending towards such a catastrophe. We, however, hope for the best, though we ought certainly to be prepared for the worst."[1] * * *

This manifesto was disapproved by the President, and Marcy wrote to Soulé that the government had not intended to assume any such policy toward Spain.

As President, Buchanan continued to urge the acquisition of Cuba. In his second annual message, he restated the oft-repeated reasons in favor of this measure, and added a new one, namely, that "if this were accomplished, the last relic of the African slave trade would instantly disappear." The same recommendation was renewed in his subsequent messages, of 1859 and 1860.[2]

Immediately after the first of these messages was received in the Senate (1858), "Slidell reported a bill from the committee on foreign relations to appropriate thirty million dollars for the purpose requested by the President;" but it aroused such bitter opposition from Northern senators that it

[1] House Ex. Doc. 33d Cong., 2d Sess., Vol. X., pp. 127-136; Rhodes: History of the United States, II., 38-44; Curtis' Buchanan, II., 136-141.

[2] Wharton's Digest, pp. 381-383.

was finally withdrawn. The next year, January 24, 1859, Slidell submitted a report on the acquisition of Cuba.

"Every one, except apparently the President, knew that their [Southern Democrats] restless longing for Cuba was prompted by the desire to extend their political powers and offset the new free States that were coming into the Union."[1]

With the abolition of slavery in the United States, these reasons for the annexation of Cuba or other Spanish-American territory ceased to exist, and although there has since been much correspondence with Spain in respect of Cuban affairs, active projects for the acquisition of the island have not been revived by the government of the United States.[2]

SAN DOMINGO.

Although Seward had, before the war, objected to the annexation of territory in the interest of slavery, yet, after that war and the abolishment of slavery in the United States, he entered upon a general policy of extending the dominion of the country over the North American continent.

"Mr. Seward's policy of extending the jurisdiction of the United States over the North American continent received a signal illustration in the acquisition of Alaska. Believing that a further step in that direction could be wisely taken, he entered into negotiations in January, 1866, with the Danish minister, General Raasloff, for the purchase of the islands of St. Thomas and St. John in the West Indies. * * *

"Mr. Seward likewise favored the annexation of San Domingo and Hayti to the United States. He was convinced that the time had arrived when such a proceeding would receive the consent of the people interested, and also give satisfaction to all foreign nations.

"In his desire to obtain a foothold for his government in the West Indies, as well for defense in time of war as for the inter-

[1] Rhodes: History of the United States, II., 350–354.

[2] The correspondence with reference to Cuba, since the close of the civil war, may be found in 1 Wharton's Digest, pp. 384–411, and in the annual volumes on Foreign Relations.

ests of commerce in time of peace, he early in 1868 laid before the Committee of Foreign Relations, in the Senate, an offer he had received, from San Domingo, of the sale of the Bay of Samana, one of the finest harbors in the world. He strongly advocated the purchase, and took some important steps toward securing it."[1]

Seward's policy, as above stated, was adopted by General Grant, when he became President, in 1869. In July of that year, General O. E. Babcock was sent to San Domingo to inquire into the condition and resources of that island. From the tenor of his instructions from Secretary Fish, the negotiation of a treaty was not at that time anticipated ; but the result of the mission was, however, "a treaty of annexation of the republic of Dominica, and a convention for the lease of the bay and peninsula of Samana—separately negotiated, and both concluded on the 29th of November, 1869."[2]

This treaty was rejected by the Senate by a vote of 28 to 28. In his second annual message, December 5, 1870, President Grant, referring to the treaty said :—

"During the last session of Congress a treaty for the annexation of the Republic of San Domingo to the United States failed to receive the requisite two-thirds vote of the Senate. I was thoroughly convinced then that the best interests of this country, commercially and materially, demanded its ratification. Time has only confirmed me in this view. I now firmly believe that the moment it is known that the United States have entirely abandoned the project of accepting, as a part of its territory, the Island of San Domingo, a free port will be negotiated for by European nations in the Bay of Samana. A large commercial city will spring up, to which we will be tributary without receiving corresponding benefits, and then will be seen the folly of our rejecting so great a prize. The government of San Domingo has voluntarily sought this annexation. * * *

"The acquisition of San Domingo is desirable because of its geographical position. It commands the entrance to the Caribbean Sea and the Isthmus transit of commerce. It possesses the richest soil, best and most capacious habors, most salubrious climate, and the most valuable products of the forest, mine, and soil of any of the West India Islands. Its possession by us will in a few years build up a coastwise commerce of im-

[1] 5 Seward's Works, 28. [2] Blaine : Twenty Years in Congress, I., 458.

mense magnitude, which will go far toward restoring to us our lost merchant marine. It will give to us those articles which we consume so largely and do not produce, thus equalizing our exports and imports. In case of foreign war it will give us command of all the islands referred to, and thus prevent an enemy from ever again possessing himself of rendezvous upon our very coast. At present our coast trade between the States bordering on the Atlantic and those bordering on the Gulf of Mexico is cut into by the Bahamas and the Antilles. Twice we must, as it were, pass through foreign countries to get, by sea, from Georgia to the west coast of Florida.

"San Domingo with a stable government, under which her immense resources can be developed, will give remunerative wages to tens of thousands of laborers not now upon the island. This labor will take advantage of every available means of transportation to abandon the adjacent islands and seek the blessings of freedom and its sequence—each inhabitant receiving the reward of his own labor. Porto Rico and Cuba will have to abolish slavery, as a measure of self-preservation, to retain their laborers.

"San Domingo will become a large consumer of the products of northern farms and manufactories. The cheap rate at which her citizens can be furnished with food, tools, and machinery will make it necessary that contiguous islands should have the same advantages, in order to compete in the production of sugar, coffee, tobacco, tropical fruits, etc. This will open to us a still wider market for our products. * * *

"The acquisition of San Domingo is an adherence to the 'Monroe doctrine'; it is a measure of national protection; it is asserting our just claim to a controlling influence over the great commercial traffic soon to flow from west to east, by way of the Isthmus of Darien; it is to build up our merchant marine; it is to furnish new markets for the products of our farms, shops, and manufactories; it is to make slavery insupportable in Cuba and Porto Rico at once, and ultimately so in Brazil; * * * and it is, in fine, a rapid stride toward that greatness which the intelligence, industry, and enterprise of the citizens of the United States entitle this country to assume among nations."* * *

President Grant proceeds to urge upon Congress the advisability of providing by resolution or otherwise for the early annexation of the island.[2]

[1] Foreign Relations, 1870, p. 6.

"The subject," says Mr. Blaine, "at once led to discussion in both branches of Congress, in which the hostility to the scheme on the part of some leading men assumed the tone of personal exasperation towards General Grant. So intense was the opposition, that the President's friends in the Senate did not deem it prudent even to discuss the measure which he recommended. As the best that could be done, Mr. Morton, of Indiana, introduced a resolution empowering the President to appoint three commissioners to proceed to San Domingo and make certain inquiries into the political condition of the island, and also into its agricultural and commercial value." The resolution was hotly opposed, but finally passed the Senate; but the House refused to concur, "except with a proviso that nothing in this resolution should be held, understood, or construed as committing Congress to the policy of annexing San Domingo. The Senate concurred in the condition thus attached, and the President approved it." The commissioners selected were Benjamin F. Wade, of Ohio, Andrew D. White, of New York, and Samuel G. Howe, of Massachusetts, who, after a thorough examination in the island, reported in favor of the policy recommended by the President. This report, however, did not convince Congress. "It was evident that neither the Senate nor House could be induced to approve the scheme, and the administration was necessarily compelled to abandon it. But defeat did not change General Grant's view of the question. In his last annual message (December, 1876), nearly six years after the controversy had closed, he recurred to the subject, to record once more his approval of it."[1]

[1] Blaine: Twenty Years in Congress, II., 465; 1 Wharton's Digest, p. 414.

In the case of the Danish Islands, Mr. Seward succeeded, in 1867, in persuading Denmark to cede the islands of St. John and St. Thomas for the sum of $7,500,000. In January, 1868, the cession was approved by the people of the islands; and the treaty was approved by the Danish government on the 30th of June of that year. The Senate of the United States, however, refused its assent to the treaty, and the whole negotiation failed. (5 Seward's Works, 29; 1 Wharton's Digest, p. 416.

THE HAWAIIAN ISLANDS.

Since 1850 the question of the annexation of the Hawaiian Islands to the United States has been under discussion from time to time.

Mainly through the exertions of American missionaries, who arrived in the islands in 1820, the people had been civilized and Christianized, their language reduced to a written form, and their political institutions reformed and regulated. In 1842 an embassy composed of William Richards and Tinioteo Haalilio was despatched from the islands to the United States and European countries for the purpose of securing the recognition of the independence of the Hawaiian Kingdom, and of negotiating treaties of amity and commerce. In answer to their request in these respects Mr. Webster, Secretary of State, replied on the 19th of December, 1842, that:—

"* * * The United States have regarded the existing authorities in the Sandwich Islands as a Government suited to the condition of the people, and resting on their own choice; and the President is of opinion that the interests of all the commercial nations require that that Government should not be interfered with by foreign powers. Of the vessels which visit the islands, it is known that a great majority belong to the United States. The United States, therefore, are more interested in the fate of the islands, and of their Government, than any other nation can be; and this consideration induces the President to be quite willing to declare, as the sense of the Government of the United States, that the Government of the Sandwich Islands ought to be respected; that no power ought either to take possession of the islands as a conquest, or for the purpose of colonization, and that no power ought to seek for any undue control over the existing Government, or any exclusive privileges or preferences in matters of commerce.

"Entertaining these sentiments, the President does not see any present necessity for the negotiation of a formal treaty, or the appointment or reception of diplomatic characters. A consul or agent will continue to reside in the islands. * * *"

Similar language with reference to Hawaii was used by President Tyler, in a special message to Congress of December 30, 1842. Congress subsequently appropriated money for the support of a consul at Honolulu, who would seem to have possessed diplomatic functions. The Hawaiian agents, proceeding to England and France, procured also from the governments of those States the recognition of the independence of Hawaii.

In the mean time Captain Paulet, of the British ship *Carysfort*, had seized the islands in the Queen's name, in February, 1843. In July of the same year, Rear-Admiral Thomas, R.N., arrived at Honolulu, and restored the dominion of the islands to their King, Kamehameha III., and the English government disavowed also the act of Captain Paulet.

After the acquisition of California, in 1848, the government of the United States began to take a more lively interest in affairs in the Pacific Ocean; and on the 20th of December, 1849, a treaty of friendship, commerce, and navigation, and for the extradition of criminals was concluded with the Hawaiian Islands. This treaty is still in force, except in so far as it has been modified by subsequent treaties.

With France the islands had had serious trouble, at first, in 1839, on account of the persecution of French Catholic missionaries, by the Hawaiian government, and later, in respect of the interpretation of treaties with France. In 1849 the public property of the Hawaiian government was seized by order of the French admiral in those waters, and, although soon restored, the controversy remained unsettled. The government of the United States tendered its good offices for the adjustment of the difficulty, but without effect; and in 1851 the government of Hawaii executed a deed of cession of the islands to the United State, providing that the kingdom should be held by them until a satisfactory settlement of the dispute with France, and failing that the cession should be made permanent. Mr. Webster, Secretary of State, ordered the deed of cession to be returned to the Hawaiian government, but wrote, on the 14th of July, 1851, that, "The Navy Department will receive instructions to place and to keep the naval armament of the United States in the Pacific Ocean in such a state of strength and preparation as shall be requisite for the preservation of the honor and

dignity of the United States and the safety of the government of the Hawaiian Islands."

In the following administration, of President Pierce, an active effort was made for the annexation of the Hawaiian Islands. In a despatch to Mason, United States Minister in Paris, Marcy wrote on the 16th of December, 1853, that the representatives of England and France at Honolulu had "used all their influence to repress the rising sentiment of annexation to this country." These two States, he said, would be very unwilling, to see these islands become a territory of the United States, but he was in doubt how far they would go in preventing their transfer to this country; and Mason was to sound the government of France on this point. The next year, 1854, a treaty of annexation was negotiated with the Hawaiian government; but before it was ratified, the king, Kamehameha III. died (December 15, 1854), and his successor opposed the policy of annexation. The government of the United States also objected to certain clauses of the treaty. Mr. Marcy said, January 31st, 1855:

"The draft of a treaty you (David L. Gregg, Minister to Hawaii) have forwarded to the Department has been considered by the President, and he directs me to say that he cannot approve of some of the articles. * * * There are in his mind strong objections to the immediate incorporation of the islands in their present condition into the Union as an independent State. It was expected that the Hawaiian government would be willing to offer the islands to the United States as a territory, and to leave the question in relation to their becoming a State to the determination of this Government, unembarrassed by stipulations on that point. * * *

"There are other objections to the draft which you have sent to the Department, though less formidable than that which the second article presents. The amount [$300,000] to be paid in annuities, etc., according to the draft is much larger than was contemplated." * * *

Nothing further was done towards annexation at this time; but on the 20th of July, 1855, a treaty of reciprocity was concluded at Washington by Mr. Marcy and Judge Lee, the commissioner of the King of Hawaii. This treaty failed for want of ratification by the Senate.

Mr. Seward would seem to have considered the propriety of reviving Marcy's reciprocity treaty. In answer to a call of the Senate for the correspondence upon this subject, Seward replied, February 5, 1864.

That "application has been made for a revival of a similar treaty which was negotiated here during the administration of President Pierce, but which was not approved by the Senate. After due consideration, however, especially in connection with the probable effect of such a measure on the public revenue at this juncture, it has not been deemed advisable further to entertain the subject. It is not deemed expedient at present to communicate the correspondence called for by the resolution."

On October 9, 1863, James McBride, United States Minister at Honolulu, had written to Seward, that American influence, in the Hawaiian Islands was declining, and that of Great Britain was taking its place. American interests, he said, predominated over all others combined, not less than four-fifths of the islands being American, and he thought "it would be a flagrant injustice to American citizens, after they have labored for the good of these islands for the past forty years, after they have brought these people out of barbarism and taught them civilization, science, and religion; in a word made them an intelligent and Christian nation, and have done all that has been done in the development of the resources of the country, and given it a world-wide popularity, to be either driven out or so treated and harassed as to make it necessary for their interests to sacrifice their property and leave."

Edward McCook, who succeeded McBride, appeared to take a different view of affairs in Hawaii. He wrote to Seward, September 3, 1866, in part as follows:—

"Before my arrival here I was led to believe that this Government displayed a marked hostility towards the Government and citizens of the United States. * * * I am perfectly satisfied that no such feeling does exist. Many of the American residents have rendered themselves obnoxious to the King and his cabinet by personal abuse of the ministers and unwarranted interference in the political affairs of the Kingdom. The natural result of this has been dislike, freely expressed, on both sides. * * * Another

class of Americans, the missionaries, have controlled the political affairs of the country since 1820. They are dissatisfied because within the last few years they have lost their hold upon the Government and its offices. The first class of Americans are generally disappointed adventurers, the second class are religionists, who, having once exercised supreme power in church and state, feel all the bitterness of disappointment at seeing their political power pass into other hands and knowing that the native population is beginning to listen to a religion preached from other pulpits than their own. The American missionaries have undoubtedly labored faithfully; but it is their own fault, if, after forty years' experience as keepers of the conscience to the nations and their princes, they permit themselves to be driven from the field by an adroit English priest, whose church is a mere political machine, and who possesses neither the intelligence nor the virtue of his more experienced and Puritanical brother missionaries. * * *

"There is still another class—the planters of the country. They are nearly all Americans, both in nationality and in sympathy; they are the better class of the residents of the islands, possess its substantial wealth, control its resources, and annually ship 20,000,000 pounds of sugar to the Pacific coast of the United States. Their pecuniary interests, their political sympathies, their business relations, and their personal attachments are all with the United States and its citizens."

Mr. McCook goes on to describe the advantages to the United States of the possession of the Hawaiian Islands, and expresses the belief that the people would be unanimously in favor of annexation. Mr. Seward answers in a guarded manner, telling McCook, "you are at liberty to sound the proper authority on the *larger subject* mentioned in your note and ascertain probable conditions. You may confidentially receive overtures and communicate the same to me."

Besides this "lager subject" of Seward's (annexation), negotiations were going on with reference to a reciprocity treaty; but as the United States had sent a ship of war, the *Lackawanna*, to Honolulu, the government of Hawaii refused to further consider the question while this vessel remained in port. On the 30th of July the *Lackawanna* departed, and the reciprocity treaty was completed and ratified by the Hawaiian government, an

extra session of the legislature having been called for that purpose. On September 12, 1867, Seward writes to McCook with reference to this subject:—

"Circumstances have transpired here which induce a belief that a strong interest, based upon a desire for annexation of the Sandwich Islands will be active in opposing a ratification of the reciprocity treaty. It will be argued that the reciprocity will tend to hinder and defeat an early annexation, to which the people of the Sandwich Islands are supposed to be now strongly inclined. * * * It is proper that you should know, for your own information, that a lawful and peaceful annexation of the islands to the United States, with the consent of the people of the Sandwich Islands, is deemed desirable by this Government; and that if the policy of annexation should really conflict with the policy of reciprocity, annexation is in every case to be preferred."

It will be noted that this was the same year in which Seward succeeded in carrying through the scheme for the purchase of Alaska, though with strong opposition in Congress. He seems to have been mistaken in his opinion as to the sentiment of the American people in respect of the annexation of Hawaii. On July 5, 1868, he wrote to Mr. Spaulding:—

"Your letter of the 14th of April has been received and carefully read. The information which you give of the excitement which is prevailing in Honolulu in regard to the annexation of the Sandwich Islands is very interesting. You suggest a system of proceeding here with reference to that object which could not possibly, at the present time, obtain the sanction of any department of this government.

"Without going into an explanation of the causes for the condition of national sentiment which temporarily exists, it is enough to say that the public attention sensibly continues to be fastened upon the domestic questions which have grown out of the late civil war. The public mind refuses to dismiss these questions even so far as to entertain the higher but more remote questions of national extension and aggrandizement. The periodical Presidential and Congressional elections are approaching. Each of the political parties seems to suppose that economy and retrenchment will be the prevailing considerations in that election and

the leaders of each party therefore seem to shrink from every suggestion which may involve any new national enterprise, and especially any foreign one. How long sentiments of this sort will continue to control the proceedings of the Government is uncertain, but, in the meantime, it will be well for you not to allow extravagant expectations of sympathy between the United States and the friends of annexation in the islands to influence your own conduct. You will continue, however, to write me upon the subject freely as you have hitherto done."

In his annual message of December 9, 1868, President Johnson said:—

"I am aware that upon the question of further extending our possessions it is apprehended by some that our political system cannot successfully be applied to an area more extended than our continent; but the conviction is rapidly gaining ground in the American mind that, with the increased facilities for intercommunication between all portions of the earth, the principles of free government, as embraced in our Constitution, if faithfully maintained and carried out, would prove of sufficient strength and breadth to comprehend within their sphere and influence the civilized nations of the world.

"The attention of the Senate and of Congress is again respectfully invited to the treaty for the establishment of commercial reciprocity with the Hawaiian Kingdom, entered into last year, and already ratified by that Government. The attitude of the United States towards these islands is not very different from that in which they stand towards the West Indies. It is known and felt by the Hawaiian Government and people that their Government and institutions are feeble and precarious; that the United States, being so near a neighbor, would be unwilling to see the islands pass under foreign control. Their prosperity is continually disturbed by expectations and alarms of unfriendly political proceedings, as well from the United States as from other foreign powers. A reciprocity treaty, while it could not materially diminish the revenues of the United States, would be a guaranty of the good will and forbearance of all nations until the people of the islands shall of themselves, at no distant day, voluntarily apply for admission into the Union.

The reciprocity treaty had been submitted to the Senate in

July, 1867, and in spite of executive urgency was not finally acted upon till June 1, 1870, when it was rejected.

The executive branch of the government, during the administrations of Johnson and Grant, was in favor of a closer union with Hawaii—either annexation or reciprocity,—and continued to keep diplomatic agents at Honolulu who were strongly of the same view. Z. S. Spaulding, in charge of the legation in 1869, wrote, on the 14th of April, to his father, a member of Congress :—

"Our latest advices, by the *Idaho*, seemed to convey the idea that the reciprocity treaty was dead beyond hope, and the effect is beginning to be felt and seen. Men who have kept silent for months guarding their words and actions, have openly expressed themselves of late as being in favor of annexation, and begun to talk of forming an organization or party with that end in view.

"What they want is to know that they will be backed up by the United States and its representatives here in all proper measures taken by them to secure a change in the political sentiment of the islands and their annexation at the earliest possible period."

Mr. Spaulding, thought that, if the reciprocity treaty failed, "the planters must have relief by annexation." And to secure this he suggested that the United States intervene, with a strong hand, in favor of the annexation party. The presence of the *Lackawanna*, which had returned to Hawaiian waters, was objected to by the government of the islands, and Mr. Spaulding thought that incident might be made the ground of active intervention.

The next minister sent to the Hawaiian Islands was Henry A. Peirce; who wrote to Secretary Fish under date of February 25, 1871, suggesting the importance of annexation, and restating all the arguments in its favor. President Grant submitted this paper to the Senate and asked its views thereon. "Impressed," says Mr. Peirce, "with the importance of the subject now presented for consideration, I beg leave to suggest the inquiry whether the period has not arrived making it proper, wise, and sagacious for the United States Government to again consider the project of annexing the Hawaiian Islands to the territory of the republic. That such is to be the political

destiny of this archipelago seems a foregone conclusion in the opinion of all who have given attention to the subject in this country, the United States, England, France, and Germany."

Mr. Peirce thought that a majority of the aborigines, creoles, and naturalized foreigners were in favor of annexation; and the probable death of the King (Kamehameha V.) within a short time would be a "propitious occasion," to inaugurate measures for that purpose.

The Senate, which had recently rejected the treaty for the annexation of San Domingo, appears not to have been convinced by this argument in favor of the same policy in respect of Hawaii.

In instructions of March 25, 1873, Secretary Fish returns to the subject:—

"The position of the Sandwich Islands as an outpost fronting and commanding the whole of our possessions on the Pacific Ocean, gives to the future of those islands a peculiar interest to the Government and people of the United States. It is very clear that this Government cannot be expected to assent to their transfer from their present control to that of any powerful maritime or commercial nation. Such transfer to a maritime power would threaten a military surveillance in the Pacific similar to that which Bermuda has afforded in the Atlantic—the latter has been submitted to from necessity, inasmuch as it was congenital with our Government—but we desire no additional similar outposts in the hands of those who may at some future time use them to our disadvantage.

"The condition of the Government of Hawaii and its evident tendency to decay and dissolution force upon us the earnest consideration of its future—possibly its near future.

"There seems to be a strong desire on the part of many persons in the islands, representing large interests and great wealth, to become annexed to the United States. And while there are, as I have already said, many and influential persons in this country who question the policy of any insular acquisitions, perhaps even of any extension of territorial limits, there are also those of influence and of wise foresight who see a future that must extend the jurisdiction and the limits of this nation, and that will require a resting spot in the mid-ocean, between the Pacific coast and the vast domains of Asia, which are now opening to commerce and Christian civilization."

On the 11th of December, 1872, Kamehameha V. died, leaving no heirs and without having appointed a successor; the legislature thereupon elected as King, William C. Lunalilo, a man who, it was thought, would be more favorable to the interests of Americans. Minister Peirce wrote, on February 7, 1873, that a strong movement was on foot to induce Lunalilo to visit Washington and endeavor to form a reciprocity treaty with the United States; and if that should fail, "it is hoped the occasion will be availed of for entering into negotiations for the annexation of these islands to the United States."

Three days later Mr. Peirce again writes on the subject of reciprocity. Speaking of the decline of the islands in population, in agriculture, and commerce, he says, "the panacea for the cure of these evils (in the opinion of the planters and merchants) is to be had by effecting a reciprocity treaty with the United States. This notwithstanding repeated failures heretofore in similar attempts to obtain one. Success therein is now hoped for by offering to the United States a *quid pro quo*, the cession of the sovereignty and proprietorship of the spacious, landlocked, easily-defended harbor or estuary known as Ewa or Pearl River, in this island, ten miles distant from Honolulu, and also to include the territory surrounding it, say ten miles square in all." Again, on the 17th of February, Peirce, strongly urges annexation or reciprocity.

Before arrangements were completed for the King's visit to the United States, he began to decline in health, and died on February 3, 1874, no successor to the throne having been appointed.

Of the two aspirants to the throne—David Kalakaua, and Queen Emma, wife of Kamehameha IV., the first named was elected. The adherents of Queen Emma incited an insurrection in Honolulu, which was only suppressed by the landing of an armed force from the United States ships of war *Tuscarara* and *Portsmouth*, and the English ship *Tenedos*.

Kalakaua had been opposed to the foreign influence; but he now favored a reciprocity treaty with the United States, and, in the autumn of 1874, visited the United States in person. Accordingly a treaty was concluded at Washington, January

30, 1875, and this time it was ratified by both governments, and proclaimed June 3, 1875. [1]

It will be noticed that nothing is said in the treaty in respect of the granting of a naval station at Pearl Harbor; and the correspondence gives no reason for this omission. The privileges granted to the United States were not to be enjoyed by any other nation. This provision has caused much controversy between Hawaii and certain other States that have commercial treaties with her containing the "most-favored-nation clause." The United States, however, continued to insist upon this stipulation, as Mr. Blaine said, "as the very essence of the treaty."

This treaty was the turning point in the industrial and political history of the Hawaiian Islands. For them the important provision—and probably that which the planters had so strenuously advocated—was the admission of their sugar into the United States free of duty. Since 1861, the import duty on raw sugar in the United States had been three cents per pound —reduced to two cents in 1870; the advantage to the sugar industry in the islands under this treaty was therefore very obvious, and may account for the feverish anxiety of a certain class in respect to the reciprocity question. For a time, too, the treaty put to rest the agitation in favor of annexation; indeed, until the McKinley Act removed the duty from sugar, there seems to have been no active movement in that direction.

But, as was anticipated, the treaty brought about closer commercial relations between the two countries, and tended to strengthen the feeling of those who desired annexation to look upon Hawaii as practically a part of our territorial possessions.

In a despatch to James M. Comly, our minister at Honolulu, December 1, 1881, Mr. Blaine said:—

"* * * In thirty years the United States has acquired a legitimately dominant influence in the North Pacific, which it can never consent to see decreased by the intrusion therein of any element of influence hostile to its own. The situation of the Hawaiian Islands, giving them the strategic control of the North Pacific, brings their possession within the range of questions of purely American policy, as much so as that of the Isthmus itself [that

[1] *Supra*, p. 165.

the proposed Panama Canal was to be regarded "as a purely American water-way to be treated as part of our own coast line"]. Hence the necessity, as recognized in our existing treaty relations, of drawing the ties of intimate relationship between us and the Hawaiian Islands so as to make them practically a part of the American system without derogation of their absolute independence. The reciprocity treaty of 1875 has made of Hawaii the sugar-raising field of the Pacific slope, and gives to our manufacturers therein the same freedom as in California and Oregon. That treaty gave to Hawaii its first great impetus in trade, and developed that activity of production which has attracted the eager attention of European powers, anxious to share in the prosperity and advantages which the United States have created in mid ocean. * * *

"Hawaii, although much farther from the Californian coast than is Cuba from the Floridian peninsula, holds in the western sea much the same position as Cuba in the Atlantic. It is the key to the maritime dominion of the Pacific States, as Cuba is the key to the Gulf trade. The material position of Hawaii is not desired by the United States any more than was that of Cuba. But under no circumstances can the United States permit any change in the territorial control of either which would cut it adrift from the American system, whereto they both indispensably belong."

In a confidential despatch of the same date, Mr. Blaine said:—

"In my formal instruction of this date I have reviewed the general question of the relationship between the United States and the Hawaiian Islands, and the position of the latter, both as an integral of the American system and as the key to the commerce of the North Pacific. As that instruction was written for communication to the Hawaiian secretary of state, I touched but lightly on the essential question of the gradual and seemingly inevitable decadence and extinction of the native race and its replacement by another, to which the powers of government would necessarily descend.

"* * * I have shown in a previous instruction how entirely Hawaii is a part of the productive and commercial system of the American States. So far as the staple growths and imports of the islands go, the reciprocity treaty makes them practically members of an American Zollverein, an outlying district of the

State of California. So far as political structure and independence of action are concerned, Hawaii is as remote from our control as China. This contradiction is only explicable by assuming what is the fact, that thirty years ago, having the choice between material annexation and commercial assimilation of the islands, the United States chose the less responsible alternative. The soundness of the choice, however, entirely depends on the perpetuity of the rule of the native race as an independent government, and that imperiled, the whole framework of our relations to Hawaii is changed, if not destroyed. * * *

"There is little doubt that were the Hawaiian Islands, by annexation or district protection, a part of the territory of the Union, their fertile resources for the growth of rice and sugar would not only be controlled by American capital, but so profitable a field of labor would attract intelligent workers thither from the United States. * * *

"I desire, therefore, that you will give this subject due attention. An examination and report will be valuable if showing the proportion of occupied rice and sugar lands to the unoccupied and undeveloped territory. * * * It will also be well for you in conversation with the leading men of Hawaii to turn their thoughts discreetly in the direction of inviting American colonization there. * * *"

By the convention of 1884, the duration of the treaty of 1875 was extended, though no notice of abrogation had been made; and an additional provision (Article II.), granting a coaling and repair station in Pearl River harbor. Exchange of ratifications were not made till November 9, 1887.[1]

In 1887 a new constitution was forced upon Kalakaua by the foreign party, under which the king was shorn of some of the powers he had exercised under the constitution of 1864.

In 1889 (July 30) a revolution was attempted under the lead of R. W. Wilcox, which was suppressed by the Hawaiian government; though the marines of the U. S. S. Adams were landed for the "protection of the people and property interests."

In 1890, the McKinley Act removed the duty on raw sugar imported into the United States; and, it appears, that a renewal of the agitation in favor of annexation of the islands to the United States began very soon thereafter. Even before

[1] *Supra*, p. 169.

this time, it began to be feared in the islands that legislation might at any time take place in the United States hostile to the sugar interests of Hawaii. It was known that the sugar planters of the United States had been opposed to the extension of the reciprocity treaty in 1884; and after 1894, the treaty would be again subject to abrogation on twelve months' notice by either party. In a statement of the Hawaiian Cabinet, October 4, 1889, it was said:—

"The history of our staple products during the past thirteen years has demonstrated how essential to our commercial prosperity are the advantages secured to us by the existing treaty.

"The development of our export trade from $2,241,041 in 1876 to $11,707,598 in 1888, during the life of that treaty, with its attendant advantages to all our citizens and residents. * * *

"By the terms of the existing reciprocity treaty with the United States, notice of termination within one year thereafter may be given in five years from now.

"The interval between 1883 and 1887, during which time the treaty was subject to termination upon a year's notice, illustrated the evil effects to our commercial well-being of a dependence from year to year for the continuance of our treaty relations upon the uncertain humor of the American Congress.

"The uncertainty involved has an unsettling effect upon capital and is detrimental to the making of large permanent investments, many of which now contemplated requiring heavy preliminary expenses."

For these reasons it was proposed to negotiate a new treaty, which should be permanent, and which should guarantee to the Hawaiian planters the same privileges in respect of duties and bounties enjoyed by American sugar producers. The McKinley Act showed that the fears of the planters were well founded.

Mr. John L. Stevens, the new minister to Hawaii, arrived at Honolulu, September 30, 1889, and soon began to take a deep interest in the political affairs of the Kingdom.

On the 20th of March, 1890, he wrote, "to thwart and hold in check the increasing influences here hostile to the United States some effective measures are absolutely necessary. In view of the facts as they existed for half a century a drifting

policy was safe enough. Rapidly changing circumstances demand a prompt abandonment of the drifting policy of the past." He urges an appropriation for Pearl harbor, financial aid to the ocean cable, and a modification of the reciprocity treaty in such a way as to increase the American population in Hawaii and strengthen the bonds between it and the United States.

On the 20th of May, he writes protesting against the clause of the McKinley Bill putting sugar on the free list. It would, he said, "spread ruin and disaster throughout the islands," and would weaken essentially their fraternal relations with the United States.

King Kalakaua died in January, 1891, and was succeeded by his sister, Liliuokalani, who, not less than her brother, was dissatisfied with the Constitution of 1887.

Mr. Stevens wrote, September 5, 1891, that the Hawaiian Government was about to renew the effort for a revision of the reciprocity treaty, and "the aim will be to secure entire free trade, with the exception of opium and distilled liquors." A liberal commercial policy, said Mr. Stevens, "is absolutely necessary to save these islands from grave disaster and secure the American interests and influence here which our Government has so long held of vital importance."

When it became apparent that no suitable treaty was likely to be obtained, the sentiment of annexation again came to the front.

Mr. Stevens wrote, February 8, 1892: "There are increasing indications that the annexation sentiment is growing among the business men as well as with the less responsible of the foreign and native population of the islands. The present political situation is feverish, and I see no prospect of its being permanently otherwise until these islands become a part of the American Union or a possession of Great Britain."

A month later, March 8, Mr. Stevens asked for instructions from the State Department, in the event of "an orderly and peaceful revolutionary movement, largely of native Hawaiians, and a Provisional or Republican Government" being proclaimed.

"Ordinarily in like circumstances, the rule seems to be to limit the landing and movement of United States forces in foreign

waters and dominion exclusively to the protection of the United States legation, and of the lives and property of American citizens. But as the relations of the United States to Hawaii are exceptional, and in former years the United States officials here took somewhat exceptional action in circumstances of disorder, I desire to know how far the present Minister and naval commander may deviate from established international rules and precedents in the contingencies indicated in the first part of this dispatch."

In the same despatch, Mr. Stevens said: "the annexation sentiment is increasing quite as much among the white residents and native Hawaiians and other workingmen who own no sugar stock as with the sugar planters."

On September 6, 1892, Admiral Brown wrote to the Secretary of the Navy from Honolulu, that "there is a strong sentiment existing in Hawaii, among the native Hawaiians as well as among the Americans and Germans, in favor of a change in the form of government, looking toward the ultimate annexation of the islands to the United States." He thought the Queen would consent to abdicate in favor of a republican form of government if she could be assured of suitable provision for her.

On the 20th of November, 1892, Mr. Stevens, in a confidential despatch to Foster, gave a detailed account of the industrial and political condition of the islands, and concludes that:

"One of two courses seems to me absolutely necessary to be followed, either bold and vigorous measures for annexation or a 'customs union,' an ocean cable from the Californian coast to Honolulu, Pearl Harbor perpetually ceded to the United States, with an implied but not necessarily stipulated American protectorate over the islands. I believe the former to be the better, that which will prove much the more advantageous to the islands, and the cheapest and least embarrassing in the end for the United States. If it was wise for the United States, through Secretary Marcy, thirty-eight years ago, to offer to expend $100,000 to secure a treaty of annexation, it certainly cannot be chimerical or unwise to expend $100,000 to secure annexation in the near future. * * * I cannot refrain from expressing the opinion with emphasis that the golden hour is near at hand. A perpetual customs union and the acquisition of Pearl Harbor, with an im-

plied protectorate, must be regarded as the only allowable alternative.

"* * * Having for so many years extended a helping hand to the islands and encouraged the American residents and their friends at home to the extent we have, we cannot refrain now from aiding them with vigorous measures, without injury to ourselves and those of our 'kith' and 'kin' and without neglecting American opportunities that never seemed so obvious and pressing as they do now. * * *"

During the last months of 1892 the contest between the Queen and the majority of the legislature became pronounced and bitter; and the despatches of Mr. Stevens show that his sympathies were fully aroused in favor of the latter, which represented the American party. He frequently makes use of opprobrious epithets in speaking of the Queen and her adherents. Mr. Charles B. Wilson, the Marshal of Hawaii, is always either the "Tahitian favorite of the Queen," or the Queen's "paramour," or the "Tahitian marshal." "The Tahitian favorite of half-English blood does not mean to yield, and were there not an American ship of war here, he would perhaps try to use his police and a mob of 'hoodlums' to break up the legislature.* * * My present impression is that the Queen and her faction will have to yield. Otherwise, the overthrow of the monarchy could not be long delayed." (Oct. 19, 1892).

Whether the views and desires of Mr. Stevens in this matter were shared by the executive department of the United States does not appear in the published correspondence; but it is hardly to be supposed that he would have taken the position he did before and after the revolution of 1893 without some encouragement from his government; indeed subsequent events would seem to show that this was the case.

On the 13th of January, 1893, the Queen, having succeeded in getting a cabinet favorable to her party, proposed to promulgate a new constitution. On Saturday, the 14th, at noon, the legislature was prorogued, and the constitution was to be proclaimed immediately afterward; but her ministers refused to sign it, and the Queen was obliged reluctantly to abandon the project, and a proclamation to that effect was issued on Monday, the 16th. The party opposed to the Queen, that is, the

Foreign or "Missionary" party, was not disposed to allow the matter to rest there; in the evening of Saturday a committee of public safety was secretly formed, who called a mass-meeting for Monday, the 16th. Accordingly such a meeting was held at 2 P. M. on that day, and the action of the committee was indorsed, and it was authorized to take the necessary measures for the public welfare. At the request of this committee, Mr. Stevens authorized the landing of sailors and marines from the U. S. S. *Boston*, "for the protection" of the United States legation and consulate and "to secure the safety of American life and property." "At 4:30 P. M., January 16th," said Captain Wiltse, "I landed the ship's battalion under command of Lieut.-Commander William T. Swinburne.

"One detachment of marines was placed at the legation and one at the consulate, while the main body of men, with two pieces of artillery, were quartered in a hall of central location near the Government building."

A provisional government was then formed, and the next day, January 17th, a proclamation announced that: "(1) The Hawaiian monarchical system of government is hereby abrogated; (2) A provisional government for the control and management of public affairs and the protection of public peace is hereby established, to exist until terms of union with the United States of America have been negotiated and agreed upon. (3) Such provisional government shall consist of an executive council of four members who are hereby declared to be Sanford B. Dole, James A. King, Peter C. Jones, and William O. Smith, who shall administer the executive department of the government." An Advisory Council was also established, consisting of fourteen members.

"Such executive and Advisory Councils shall, acting jointly, have power to remove any member of either council and to fill such or any other vacancy."

The Queen and her ministers were removed from office.

The right of the writ of *habeas corpus* was suspended and martial law was declared to exist throughout the island of Oahu.

The Queen and her ministers published on the same day the following protest:

"I, Liliuokalani, by the Grace of God and under the Constitu-

tion of the Hawaiian kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional government of the Hawaiian kingdom by certain persons claiming to have established a provisional government of and for this kingdom.

"That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency, John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government.

"Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the government of the United States shall, upon the facts being presented to it, undo the action of its representative and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.

"Done at Honolulu this seventeenth day of January A.D. 1893."

In the afternoon of this same day Mr. Stevens recognized the provisional government. He wrote to Secretary Foster on the 18th:

"I promptly recognized the provisional government as the *de facto* government of the Hawaiian Islands. The English minister, the Portugese charge d'affaires, the French and the Japanese Commissioners promptly did the same; these with myself being the only members of the diplomatic corps residing here.

"All is quiet here now. Without the sacrifice of a single life this change of government has been accomplished. Language can hardly express the enthusiasm and the profound feeling of relief at this peaceful and salutary change of government. The underlying cause of this profound feeling among the citizens is the hope that the United States Government will allow these islands to pass to American control and become American soil. A commission of citizens, duly accredited, will go by the steamer that takes this dispatch to Washington, to state the wishes of the provisional government and of the responsible people of the islands and to give a complete account of the existing state of things here."

This commission, consisting of L. A. Thurston, W. C. Wilder,

W. R. Castle, J. Marsden, and Charles L. Carter, arrived in the United States and communicated with Secretary Foster, February 3, 1893. They declared that they were instructed and fully authorized and empowered by the provisional government to negotiate a treaty between the Hawaiian Islands and the United States by the terms of which full and complete political union might be secured between the United States of America and the Hawaiian Islands.

They related the causes which led up to the revolution, and also submitted a copy of the protest made by Queen Liliuokalani against the action of the provisional government.

The Queen appealed to the President of the United States in a letter which was received February 3d, as follows:

"His Excellency, Benjamin Harrison, President of the United States.

"MY GREAT AND GOOD FRIEND:—It is with great regret that I address you on this occasion. Some of my subjects aided by aliens have renounced their loyalty and revolted against the constitutional government of my kingdom. They have attempted to depose me and to establish a provisional government in direct conflict with the organic law of this kingdom. Upon receiving incontestable proof that His Excellency the Minister Plenipotentiary of the United States aided and abetted their unlawful movements and caused United States troops to be landed for that purpose, I submitted to force believing that he would not have acted in that manner unless by the authority of the government which he represents.

"This action on my part was prompted by three reasons: The futility of a conflict with the United States; the desire to avoid violence, bloodshed, and the destruction of life and property, and the certainty which I feel that you and your government will right whatever wrongs have been inflicted upon us in the premises.

"In due time a statement of the true facts relating to this matter will be laid before you, and I live in the hope that you will judge uprightly and justly between myself and my enemies.

"This appeal is not made for myself personally, but for my people who have hitherto always enjoyed the friendship and protection of the United States.

"My opponents have taken the only vessel that could be obtained here for the purpose, and hearing of their intention to

send a delegation of their number to present their side of this conflict before you, I requested the favor of sending by the same vessel an envoy to you to lay before you my statement, as the facts appear to myself and my loyal subjects.

" This request has been refused and I now ask you, that in justice to myself and to my people, no steps be taken by the government of the United States until my cause can be heard by you.

" I shall be able to dispatch an envoy about the 2d day of February, as that will be the first available opportunity hence, and he will reach you with every possible haste that there may be no delay in the settlement of this matter.

" I pray you, therefore, my good friend, that you will not allow any conclusion to be reached by you until my envoy arrives.

" I beg to assure you of the continuance of my highest consideration.

" LILIUOKALANI, R.

" HONOLULU, January 18, 1893."

On the 28th of January, Secretary Foster wrote to Stevens approving his course in recognizing the provisional government.

" The rule of this government has been to recognize and enter into relation with any actual government in full possession of executive power with the assent of the people. You will continue to recognize the new government under such conditions. It is trusted that the change besides conducing to the tranquillity and welfare of the Hawaiian Islands, will tend to draw closer the intimate ties of amity and common interest which so conspicuously and necessarily link them to the United States."

On February 1st, Mr. Stevens telegraphs as follows :—

" Provisional Government of Hawaii gaining power and respect. Everything is quiet. Annexation sentiment is increasing. Dead monarchy and opposition to annexation is supported chiefly by lottery and opium ring. To-day at 9 A.M. in accordance with request of provisional government of Hawaii, I have placed government of Hawaii under the United States' protection during the negotiation, not interfering with the execution of public affairs. Have mailed important dispatches. Have sent duplicate copies of dispatches. It is advisable that Commodore Skerrett proceed at once to Honolulu, Sandwich Islands, with one or more United States ships as precautionary measures."

Mr. Stevens wrote the same day, giving at length his views on the question of annexation, and the special arrangement in respect of the sugar bounty. He declares that the annexation settlement is everywhere increasing and that "the Hawaiian pear is now fully ripe and this is the golden hour for the United States to pluck it. If annexation does not take place promptly, all is held in doubt and suspense for six or ten months, there certainly will be here a revulsion to despair, and these people by their necessities might be forced towards becoming a British colony, for the English here of the monarchical type would then avail themselves of the opportunity to stir up all possible opposition to annexation."

The reasons given by Stevens for declaring a protectorate were that on account of the great number of Japanese and Chinese, evil-disposed persons might easily stir them up to disorder; and, moreover, there was the possibility of the arrival in Hawaii of a British war-vessel, and that the English minister there thus aided, might try to press unduly the provisional government. "With the islands under our protection, we think the English minister will not attempt to insist that his government has the right to interfere while our flag is over the Government building."

The American flag had been raised over the Government building, and the marines from the *Boston* had been retained permanently on shore.

When the news of Stevens' action in setting up a protectorate reached the Government at Washington, the President disavowed the act, and Secretary Foster telegraphed Stevens to that effect:—

"Press telegrams from San Francisco give full details of events of first instant with text of your proclamation. The latter in announcing the protection of Hawaiian Islands in the name of the United States would seem to be tantamount to the assumption of a protectorate over those islands on behalf of United States, with all the rights and obligations which the term implies. It is not thought, however, that the request of the provisional government for protection or your action in compliance therewith contemplated more than the co-operation of the moral and material forces of the United States to strengthen the authority of the provisional Government by according to it adequate protection

for life and property during the negotiations instituted here, and without interfering with the execution of public affairs. Such co-operation was and is within your standing instructions and those of the naval commanders in Hawaiian waters. So far as your course accords to the *de facto* Government, the material cooperation of the United States for the maintenance of good order and the protection of life and property from apprehended disorders it is commended ; but so far as it may appear to overstep that limit by setting the authority of the United States above that of the Hawaiian Government in the capacity of protector, or to impair the independent sovereignty of that Government by substituting the flag and power of the United States, it is disavowed."

Secretary Foster authorized Mr. Stevens to retain the marine force on shore for the protection of the American interests, but called his attention to the fact that it is always necessary "to distinguish between the functions of voluntary or accorded protection and the assumption of the protectorate over the Government of the Hawaiian Islands, which the United States has recognized as sovereign and with which they treat on terms of sovereign equality."

Mr. Foster in a dispatch of February 11th, 1893, explained at greater length the views of the Government in respect of a protectorate. "No steps," said Mr. Foster, "are to be taken by you or will be sanctioned by this Government which might tend to derogate in any way from the independence of the Government of the Hawaiian Islands, which the United States have recognized as sovereign, and with which they treat on terms of sovereign equality."

Secretary Foster's language would seem to plainly imply that he did not approve the act of placing the United States flag upon the Government building of Hawaii; and one of Mr. Stevens' reasons for placing it there was to interpose the power of the United States, which the flag represented, between the provisional Government and any possible interference by England. But Stevens did not understand the "disavowal" to affect in any way the action he had taken. On the 27th of February, he wrote: "My understanding of the spirit and terms of our temporary protectorate is in entire accord with the spirit and terms of the Secretary of State's dispatch to me

of February 14th, and implied in my dispatch No. 84, of February 1st, and the papers accompanying the same."

The American flag was, therefore, allowed to remain on the Government building, representing the authority of the United States.

The Commissioners of the provisional government arrived in Washington on the 3d of February, and on the 14th of the same month a treaty of annexation was concluded, which was submitted on the next day by the President to the Senate for its ratification. By the first article of this treaty the Government of the Hawaiian Islands cedes absolutely to the United States all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands. All questions of detail such as the ownership of public lands, the extension of the laws of the United States over the islands, and their relations to the United States, were left for the future action of Congress.

The Senate not having acted on this treaty, during the administration of President Harrison, Mr. Cleveland on coming into office, on March 4th, withdrew the treaty from the Senate. He said:

"I conceive it to be my duty therefore to withdraw the treaty from the Senate for examination, and meanwhile to cause an accurate, full, and impartial investigation to be made of the facts attending the subversion of the constitutional Government of Hawaii, and the installment in its place of the provisional Government. I selected for the work of investigation the Hon. James H. Blount of Georgia, whose service of eighteen years as a member of the House of Representatives, and whose experience as Chairman of the Committee on Foreign Affairs in that body, and his consequent familiarity with international topics, joined with his high character and honorable reputation, seem to render him peculiarly fitted for the duties entrusted to him."

Mr. Blount was appointed Commissioner and received his instructions from Secretary Gresham on March 11, 1893:—

"HONORABLE JAMES H. BLOUNT:

"SIR:—The situation created in the Hawaiian Islands by the recent deposition of Queen Liliuokalani and the erection of a provisional government demands the fullest consideration of the President, and in order to obtain trustworthy information on

this subject, as well as for the discharge of other duties herein specified, he has decided to despatch you to the Hawaiian Islands as his special Commissioner, in which capacity you will herewith receive a commission and also a letter whereby the President accredits you to the President of the Executive and Advisory Council of the Hawaiian Islands.

"The comprehensive, delicate and confidential character of your mission can now only be briefly outlined, the details of its execution being necessarily left in great measure to your good judgment and wise discretion.

"You will investigate and fully report to the President all the facts you can learn respecting the condition of affairs in the Hawaiian Islands, the causes of the revolution by which the Queen's government was overthrown, the sentiment of the people toward existing authority, and in general all that can fully enlighten the President touching the subject of your mission.

"To enable you to fulfill this charge, your authority in all matters touching the relations of this government to the existing or other government of the islands, and the protection of our citizens therein is paramount, and in you alone, acting in co-operation with the commander of the naval forces, is vested full discretion and power to determine when such forces should be landed or withdrawn. * * *

"In the judgment of the President your authority, as well as that of the commander of the naval forces in Hawaiian waters should be and is limited in the use of physical force to such measures as are necessary to protect the persons and property of our citizens; and while abstaining from any manner of interference with the domestic concerns of the islands, you should indicate your willingness to intervene with your friendly offices in the interests of a peaceful settlement of the trouble within the limits of sound discretion.

"Should it be necessary to land an armed force upon Hawaiian territory on occasions of popular disturbance when the local authorities shall be unable to give adequate protection to the life and property of citizens of the United States, the assent of such authority should first be obtained if it can be done without prejudice to the interests involved. Your power in this regard should not, however, be claimed to the exclusion of similar measures by the representatives of other Powers for the protection of the lives and property of their citizens or subjects residing in the islands.

"While the United States claim no right to interfere in the political or domestic affairs or in the internal conflict of the Hawaiian Islands otherwise as herein stated, or for the purpose of maintaining any treaty or other right which they possess, this government will adhere to its consistent and established policy in relation to them and it will not acquiesce in domestic interference by other Powers." * * *

Mr. Blount was furnished with a letter of credence from President Cleveland to President Dole, in the usual form of such diplomatic communications. The statement is made that in all relations between the two governments the authority of Mr. Blount is paramount.

In a despatch to Mr. Stevens, Secretary Gresham informs Stevens of Blount's appointment, and says that "in all matters pertaining to the existing or other government of the islands, the authority of Mr. Blount is paramount. As regards the conduct of the usual business of the Legation, you are requested to continue, until further notice, in the performance of your official functions, so far as they may not be inconsistent with the special powers confided to Mr. Blount. You are also requested to aid him in the fulfillment of his important mission, by furnishing any desired assistance and information, and the archives of the Legation should be freely accessible to him.

"Mr. Blount is fully instructed touching his relations to the commanding officer of the United States naval force in Hawaiian waters."

On the 29th of March Mr. Blount arrived at Honolulu, and the next day presented his letters of credence to President Dole. On the 31st he issued the following order to Admiral Skerrett:

"You are directed to haul down the United States ensign from the Government Building, and to embark the troops now on shore to the ships to which they belong.

"This will be executed at 11 o'clock on the 1st day of April."

This order was carried out at the time designated; and Commissioner Blount now began a long and careful investigation into the history and causes of the then recent revolution.

Mr. Stevens tendered his resignation on March 7, which was

accepted by the Executive on April 25; and soon after, Mr. Blount was appointed as his successor. Mr. Stevens, under date of May 18, 1893, writes: "Agreeably to your instructions, I have turned over the archives and other property of the Legation to Hon. James G. Blount, my successor as envoy extraordinary and minister plenipotentiary of the United States."

On the 24th of May, Mr. Blount writes to Secretary Gresham:

"I received by the *Australia* arriving here on the 17th instant two telegrams from you, dated on the 9th instant. * * *

"I regret very much that it was found necessary to appoint me as Envoy Extraordinary and Minister Plenipotentiary to the Hawaiian Islands.

"On the afternoon of the former date I took the oath of office —which I enclose herewith—and have taken charge of the records and property of the legation.

"I have done so because I supposed from the circumstances that I was appointed against a declaration on my part to you in Washington that I could not accept it, that some important reason, not contained in the telegram, made it desirable to the President and yourself that Mr. Stevens' connection with the Legation should be promptly severed.

"I enclose herewith my resignation of the office, with the request that it be accepted, and my successor appointed as soon as practicable."

Mr. Blount continued to sign himself commissioner in the case of letters touching the business of his original mission. It was not till October that a successor was appointed.

Mr. Blount's report includes a large number of affidavits, interviews, and statements of various persons, with reference to the causes and the circumstances accompanying the revolution of January, 1893. As to the revolution, he was convinced that the action of Minister Stevens was the chief factor in its successful termination. This action consisted in giving assurance to the revolutionists of the aid of the United States forces, and in recognizing the provisional government, before the Queen had yielded, under protest, and before her troops had surrendered the station-house. The evidence is certainly very strong to that effect. All the drift of Mr. Stevens's dispatches shows that he was ardently in favor of such a move-

ment; and Mr. Damon admitted that he expected the aid of the United States forces at the time the new government was proclaimed.

Mr. Albert S. Willis, who succeeded Mr. Blount, arrived at Honolulu on the 4th of November. His instructions, dated October 18, 1893, are as follows:

"Supplementing the general instructions which you have received with regard to your official duties, it is necessary to communicate to you in confidence special instructions for your guidance in so far as concerns relations of the Government of the United States towards the *de facto* Government of the Hawaiian Islands. The President deemed it his duty to withdraw from the Senate the treaty of annexation which has been signed by the Secretary of State and agents of the provisional Government and to despatch a trusted representative to Hawaii to impartially investigate the causes of the so-called revolution and obtain a report of the true situation in those islands. This information was needed the better to enable the President to discharge a delicate and important public duty. The instructions given to Mr. Blount, of which you are furnished a copy, had a line of conduct to be observed by him in his personal relations to the islanders, by which you will be guided so far as they are applicable and in consistence with what is herein stated.

"It remains to acquaint you with the President's conclusions upon the facts embodied in Mr. Blount's report and to direct your course in accordance therewith. The provisional Government was not established by the Hawaiian people with their consent or acquiescence, nor has it since existed with their consent. The Queen refused to surrender her power to the provisional Government until convinced that the Minister of the United States had recognized it as the *de facto* authority and would support and defend it with the military force of the United States, and that resistance would precipitate a bloody conflict with that force. She was advised and assured by her Ministers and by the leaders in the movement for the overthrow of her Government that if she surrendered under protest her case would afterwards be thoroughly considered by the President of the United States. The Queen finally and wisely yielded to the armed forces of the United States, then quartered in Honolulu, relying upon the good faith and honor of the President, when informed of what had occurred, to undo the action of the Minister and reinstate her in the author-

ity which she claimed as the constitutional sovereign of the Hawaiian Islands.

"After a patient examination of Mr. Blount's report the President is satisfied that the movement against the Queen, if not initiated, was encouraged and supported by the representative of this Government at Honolulu; that he promised in advance to aid her enemies in an effort to overthrow the Hawaiian Government and set up by force a new Government in its place, and that he kept these promises by causing a detachment of troops to be landed from the *Boston* on Jan. 16, and by recognizing the provisional Government the next day, which was too feeble to defend itself, and the constitutional Government was able to successfully maintain its authority against any threatening force other than that of the United States already landed. The President is therefore determined that he will not send back to the Senate for its action thereon the treaty which he withdrew from that body for further consideration on the 9th day of March last.

"On your arrival you will take advantage of the earliest opportunity to inform the Queen of this. Make known to her the President's position regarding the reprehensible conduct of the American Minister and the presence on land of the United States forces. Advise her of the desire of this Government to do justice and to undo this wrong. You will, however, at the same time inform the Queen that the President expects that she will extend amnesty to all who were against her, including all who were connected with the provisional Government, depriving them of no right or privilege. Having secured the Queen's agreement to pursue this policy, you will advise the Executive of the provisional Government and his Ministers of the President's determination of this question, which their action and that of the Queen devolved upon him, and that they are expected to promptly restore her constitutional authority. Should the Queen decline to pursue the course suggested, or should the provisional Government refuse to abide by the President's decision, you will report the facts and await further instructions."

In accordance with these instructions, Mr. Willis had an interview with the Queen, on November 13, and asked if she was willing to comply with the President's conditions in the event of her restoration:

"She hesitated a moment and then slowly and calmly answered:

'There are certain laws of my government by which I shall abide. My decisions would be, as, the law directs, that such persons should be beheaded and their property confiscated to the government.'

"I then said, repeating very distinctly her words: 'It is your feeling that these people should be beheaded and their property confiscated?'

"She replied, 'It is.'

"I then said to her: 'Do you fully understand the meaning of every word which I have said to you and of every word which you have said to me, and if so, do you still have the same opinion?'

"Her answer was: 'I have understood and mean all I have said, but I might leave the decision of this to my ministers.'

"To this I replied: 'Suppose it was necessary to make a decision before you appointed any ministers, and that you were asked to issue a royal proclamation of general amnesty, would you do it?'

"She answered, 'I have no legal right to do that and I would not do it.'

"Pausing a moment she continued: 'These people were the cause of the revolution and constitution of 1887. There will never be any peace while they are here. They must be sent out of the country or punished and their property confiscated.'

"I then said: 'I have no further communication to make to you now and will have none until I hear from my Government, which will probably be three or four weeks.'"

Mr. Willis further said that in conversation with Sam Parker and others, it was his opinion, that in the event of restoration, there would be a concerted movement for the overthrow of the constitution of 1887, "which would mean the overthrow of constitutional and limited government." He sent a telegram to the Secretary of State as follows:

"Views of first party [the Queen] so extreme as to require further instructions."

To this Secretary Gresham replied by telegram of November 24: "The brevity of your telegrams is embarrassing. You will insist upon amnesty and recognition of obligations of the provisional Government as essential conditions of restoration. All interests would be promoted by prompt action."

Again, on the 3d of December, Gresham telegraphed:

"Your despatch, which was received by steamer on the 25th of November, seems to call for additional instructions. Should the Queen refuse to assent to the written conditions, you will at once inform her that the President will cease interposition in her behalf, and, while he deems it his duty to endeavor to restore her to the sovereign constitutional Government of the islands, his further efforts in that direction will depend upon the Queen's unqualified agreement that all obligations created by the provisional Government in a proper course of administration shall be assumed, and upon such pledges by her as will prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the provisional Government. The President feels that by our original interference and what followed we have incurred responsibility to the whole Hawaiian community, and it would not be just to put one party at the mercy of the other.

"Should the Queen ask whether, if she accedes to the conditions, active steps would be taken by the United States to effect her restoration or to maintain her authority thereafter, you will say that the President cannot use force without the authority of Congress. Should the Queen accept the conditions and the provisional Government refuse to surrender, you will be governed by previous instructions. If the provisional Government asks whether the United States will hold the Queen to the fulfillment of stipulated conditions, you will say that the President, acting under dictates of honor and duty as he has done in endeavoring to effect restoration, will do all in his constitutional power to cause observance of the conditions he has imposed."

On the 16th of December, Mr. Willis had another interview with the Queen, in the presence of Mr. J. O. Carter, and again on the 18th, in which she so far modified her previous position as to spare the lives of those concerned in deposing her, but insisted that they should be removed out of the islands, and that their property should be confiscated.

Mr. Willis then read to her the instructions given him by the President with reference to amnesty, and to the effect that, if the Queen would not assent, the President would cease interference in her behalf. The interview then closed; but it appears that later, on the same day, December 18, the Queen was persuaded to sign the following agreement:

"I, Liliuokalani, in recognition of the high sense of justice which actuated the President of the United States, and desiring to put aside all feeling of personal hatred or revenge, and to do what is best for all the people on these islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that if reinstated as constitutional sovereign of the Hawaiian islands I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of Jan. 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights and immunities under the constitution and laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measure of proscription or punishment for what has been done in the past by those setting up or supporting the provisional Government. I further solemnly agree to accept the restoration under the constitution existing at the said time of said revolution, and that I will abide by and fully execute that constitution, with all the guarantees as to person and property therein contained.

"I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the provisional Government in the proper course of administration, including all expenditures for military and police service, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown.

"Witness my hand this 28th day of December, 1893.

"LILIUOKALANI.

"Attest: J. O. CARTER."

Having obtained this agreement of the Queen, Mr. Willis proceeded, on the next day, December 19, to carry out the second part of his instructions, namely, to procure the abdication of the provisional Government in favor of the Queen. In a communication to President Dole, after reciting the circumstances of the revolution, and the President's view of the responsibility incurred by the United States through the illegal action of their representative Minister Stevens, and also the agreement signed by the Queen, Mr. Willis continues:

"It becomes my further duty to advise you, sir, the Executive of the provisional Government and your ministers, of the President's determination of the question which your action and that

of the Queen devolved upon him, and that you are expected to promptly relinquish to her her constitutional authority. * * *

"I submit to you the question;

"'Are you willing to abide by the decision of the President?'"

To this question President Dole gave, on the 23d of December, a long and ably written answer. He reviews the history of the case, and avers that the evidence upon which the President of the United States had based his decision was wholly *ex parte*, taken in secret, and with no opportunity for the provisional government to present its side of the case. Many of the assertions of Commissioner Blount he contradicts, and says:

"Surely the destinies of a friendly government, admitting by way of argument that the right of arbitration exists, may not be disposed of upon an *ex parte* and secret investigation, made without the knowledge of such government or an opportunity by it to be heard or even to know who the witnesses were."

Mr. Dole denies the right of the United States to interfere in the internal affairs of a *de facto* independent government, whose sovereignty they had recognized by twice accrediting ministers to it, and with which they had negotiated a treaty.

As to the interference of Minister Stevens, President Dole says:

"No man can correctly say that the Queen owed her downfall to the interference of American forces. The revolution was carried through by the representatives, now largely re-enforced, of the same public sentiment which forced the monarchy to its knees in 1887, which suppressed the insurrection of 1889, and which, for twenty years, had been battling for representative government in this country. If the American forces had been absent, the revolution would have taken place, for the sufficient causes for it had nothing to do with their presence."

In conclusion, President Dole says:

"I am instructed to inform you, Mr. Minister, that the provisional Government of the Hawaiian Islands respectfully and unhesitatingly declines to entertain the proposition of the President of the United States that it should surrender its authority to the ex-Queen."

On receiving Mr. Willis's account of his first interview with Queen Liliuokalani, President Cleveland, believing that her peaceful restoration through his efforts was improbable, submitted the whole question, with the correspondence thereon, to Congress for its action. He closed his message to Congress, of the 18th of December, as follows:

"In commending this subject to the extended powers and wide discretion of the Congress, I desire to add the assurance that I shall be much gratified to co-operate in any legislative plan which may be devised for the solution of the problem before us, which is consistent with American honor, integrity and morality."

The subject was subsequently discussed in both Houses of Congress. In the Senate, the committee on Foreign Relations entered upon a thorough investigation of the matter, and on the 26th of February, 1894, submitted three separate reports. The majority report was presented by the chairman, Senator Morgan, Democrat, and concurred in by the Republican Senators Sherman, Fry, Dolph and Davis. This report approved of nearly everything that had been done, with the exception of the action of Minister Stevens in declaring a protectorate over Hawaii, and in placing the American flag over the government building in Honolulu.

The four Republican senators mentioned above presented a minority report in which they censure the appointment of Blount, and the acts of both Blount and Willis in Hawaii.

A minority report was also presented by the Democratic members of the committee other than Morgan, namely, Butler, Turpie, Daniel and Gray, in which they censure the conduct of Stevens both before and after the revolution.

In the House, the subject became a party question, and the debate upon it often showed the spirit of partisan bitterness. The most extended discussion took place in the first week of February, 1894.

CONCLUSION.

In respect to the annexation of the Hawaiian Islands, it will be seen by the foregoing outline of the history of our relations with the islands, that Secretaries Marcy, Seward, Fish and Blaine were in favor of annexation, and the first three, at least, did what they could to accomplish it. Failing in this, they favored a reciprocity treaty which would bind the islands, politically and commercially, more closely to the United States. Such a treaty was finally concluded in 1875; but it has been by no means an unmixed good for the islands, indeed it is the cause of the greater part of their present troubles. It has had the effect of transforming the varied agricultural industries of the country into a single one—that of sugar planting; an industry which requires large capital for its successful execution, and from which, therefore, the natives were for the most part excluded. In a report on Hawaiian sugar-plantation corporations, of June, 1893, it appears that, of stock issued amounting to $27,964,290, only $38,991 was held by native Hawaiians. And in a list of sugar plantations not incorporated, valued at $3,000,000, the name of no native Hawaiian appears. In other directions the showing is not much better. Of forty-three business corporations other than sugar plantations, with stock amounting to about $6,000,000, the native Hawaiians are stockholders to the amount of only $51,620. It appears, furthermore, that of $28,274,000 capital stock of sugar corporations, $13,800,000 was owned by San Francisco companies.

But perhaps this is not the worst evil for the islanders brought about by the reciprocity treaty. The sugar planting necessitated the introduction of foreign labor; and accordingly the importation of Asiatic contract laborers was entered upon. By the census of 1890, there were in the islands 15,301 Chinese, 12,360 Japanese, and 8,602 Portuguese of the most ignorant class. Of these the Chinese and Japanese are nearly all males, with no political rights. Thus a race problem has been suddenly thrust upon the islands which will continue to embarrass any government that may have control.

The native Hawaiians are thus not only being crowded out of the industrial pursuits of their own land, but the foreigners, who represent the greater part of the material interests of the Islands, naturally, perhaps, desire also the political control. It is for their interests to have an efficient and stable government; and that they undoubtedly did not have during Kalakaua's reign.

The constitution of the kingdom was largely a copy of that of the United States; but one very important difference, necessitated by the fact of their having a king, was the adoption of the English system of responsible cabinet government. Instead, moreover, of a legislature composed of senators and representatives, they established one composed of nobles and representatives sitting together in one House.

By the constitution of 1864, the King appointed the nobles to hold their appointments during life, and their number was not to exceed twenty. The representatives were to be elected by the people, and were not to be less in number than twenty-four, nor more than forty.

The members of the cabinet were to be appointed by the King, and to hold office during his pleasure. All acts of the King must be countersigned by a minister, who thus made himself responsible.

The judicial power was vested "in one supreme court and in such inferior courts as the legislature may, from time to time, establish." And the judges were to hold office during good behavior.

Under this constitution the King and his friends could usually control the legislature; and during Kalakaua's reign the government became so corrupt that the opposition finally forced upon him the constitution of 1887. The changes in the old constitution were intended mainly to restrict the power of the King, and place the legislature under the control of the capitalist class. To this end, the legislature was to be composed of twenty-four nobles and the same number of representatives. The nobles were to be elected for six years by residents of the Hawaiian Islands, who had resided there at least three years, and who possessed taxable property in the country of the value of not less than three thousand dollars, or should have received an income of not less than six hundred dollars.

This provision, it was said, deprived three-fourths of the native voters of the right to vote for nobles.

Representatives were required to own real estate of the value of five hundred dollars, or to have an annual income of at least two hundred and fifty dollars.

The members of the cabinet were to be appointed by the King, but could be removed by him "only upon a vote of want of confidence passed by a majority of all the elective members of the legislature."

The King was exceedingly dissatisfied with this constitution, and within the next few years several attempts were made to overturn it. And the Reform party who had enacted it were not always able to maintain a majority of the legislature in their favor.

In January, 1893, the Reform cabinet was voted out, as I have said, and the Queen, with a cabinet favorable to her, attempted to proclaim a new constitution which would restore to her the powers exercised by the King under the constitution of 1864.

The most important features of this instrument were:

Art. 57. The Queen shall appoint the nobles not to exceed twenty-four.

Art. 60. The representatives may be increased from twenty-four to forty-eight.

Art. 62. Only subjects shall vote.

Art. 65. The term of appointment of the supreme court judges shall be, not for life, as before, but for six years.[1]

[1] The outline of the history of the relations of the United States with the Hawaiian Islands given above is taken mainly from the documents submitted to Congress by President Cleveland, and which may be found in full in H. R. Ex. Doc. Nos. 47 and 48, 53d Cong., 2d Sess. There is also some later correspondence. The annual volumes of Foreign Relations contain much information in respect of Hawaii not to be found in the documents mentioned above. See also Wharton's Digest of International Law, I. § 62. And "The History of the Hawaiian People," by W. D. Alexander.

SAMOA.

"1 The group known as Samoa, or the Navigator's Islands, lies in a mean latitude of 13° 50′ south, and extends from 170° 30′ to 173 west longitude.

"2. The largest island of the group of Savaii, which attains an altitude of nearly 5,000 feet, and contains an approximate area of 325,440 acres.

"3. The island of Upolu, which lies ten miles east of Savaii, is the next in size. It contains approximately an area of 169,984 acres, and reaches an altitude of about 2,500 feet.

"4. Next, eastward of Upolu, lies the small island of Tutuila, containing an area of about 24,988 acres, and ascending to an altitude of 2,000 feet.

"5. The Manua Islands lie eastward of Tutuila, a distance of sixty miles. They are three in number and of small area. The largest of them rises, in the form of a cone, to a height of 2,500 feet.

"6. These islands are properly classed with the Samoan group; but beyond language and origin, the people have little in common with the two large islands, and take no permanent or practical part in their politics.

"7. The distance from Auckland, in New Zealand, to Samoa is 1,600 miles, and the island of Tutuila referred to above, lies directly in the track taken by the trans-Pacific steamers running between the Australasian colonies and San Francisco, or Vancouver's Island, *via* Hawaii. [The distance to Honolulu is 2,215, and to San Francisco, 4,275 miles.]

"8. Prior to 1856, it cannot be said that commerce had any well-marked existence at Samoa, although the islands had been occasionally resorted to by whalers and trading vessels, chiefly from Sydney and Hobart.

"9. There were, however, even then, two British resident traders and one American at Apia, doing a certain amount of trade with the colonies and with ships passing between California and Australia.

"10. So far back as the year 1845 a British consul had been appointed to reside at Samoa. It was also the residence of an American consular officer.

"11. About the year 1857 the powerful and well-known firm of Messrs. Godeffroy, of Hamburg, established themselves at Apia, making that place the base of their operations in other parts of the Pacific Ocean.

"12. In the month of April, 1877, there is reason to suppose that the consular and naval representatives of the German Government were negotiating with the native authorities (Taimua and Faipule) of Samoa with a twofold object: (1) to secure German interests during the prevalent disputes and petty wars of contending native parties, and (2) to obtain the recognition of Germany's equal rights with other powers, as against the efforts constantly being made to bring the group under the protectorate of a foreign government.

"13. With these objects in view, the German representative at Samoa obtained certain engagements from the then ruling native authority by such representative termed the protocol of the 3d July, 1877.

"14. On the 17th of January, 1878, a treaty was concluded between the Governments of Samoa and the United States of America.

"15. When the ratified treaty arrived at Apia by the United States war-ship Adams, the German representative deemed it necessary to vindicate the rights of the most favored nation, which they affirmed had, under the protocol already cited, been guaranteed to Germany.

"16. The German consul affirmed that, in the commercial treaty concluded with the United States, privileges were granted with another nation in violation of the terms of Article IV. of the protocol. The objection raised by the German consul was founded upon the terms of Article V. of the American treaty.

"17. Not receiving a satisfactory reply from the Government of Samoa, the ports of Saluafata and Fulealili were seized by the German authority, and the Imperial Government notified its determination to maintain this seizure until security was given for the conclusion of a treaty between Germany and Samoa on the footing of the most favored nation.

"18. Such a treaty was, after some difficulty, finally concluded on the 24th January, 1879. Among other things, the treaty provided (Article V.) for the exercise of certain exclusive privileges by Germany in the harbor of Saluafata. It also contained an agreement with respect to land in the following words:

"'To confirm in quiet possession of German subjects all lands

in Samoa which they have hitherto bought from Samoans in a regular manner, and in accordance with the custom prevailing at the time ; and all further interference with regard to such lands is therefore excluded by this confirmation by the Samoan Government of the ownership of the German subjects.'"

"[It is open to question whether this rendering of the original German text is permissible, but it is the rendering given by M. Weber, who at the time was both German consul and manager for Messrs. Godeffroy and who, sitting as a judge, immediately proceeded to act on it.]

"19. Much jealousy was created by the exclusive privileges accorded to Germany in respect of Saluafata Harbor, and the Samoans laid themselves open to a complaint similar to that so recently preferred by German representatives, viz., that Article V. of the German treaty was in violation of the provision of Article VI. of the American treaty.

"20. British and American residents were much disturbed by the assumption that German subjects, which practically meant the house of Messrs. Godeffroy, had secured possession of all lands claimed by them without investigation.

"21. As much of the land so claimed was, and still is, disputed by other nations upon titles believed to be equally as good or better than those of Germany, this further feeling of irritation was, perhaps, not unnatural. A treaty with Great Britain conferring upon the latter the privileges of the most favored nation was concluded upon the 28th August, 1879.

"22. It is proper to note that all through the official correspondence relating to the period and events adverted to, the German Government declared itself only anxious to acquire 'equal right' with other nations in Samoa, in order to safeguard 'the well-won rights of its subjects' against the arbitrary measures of a policy influenced by speculators.

"23. In the Reichstag on the 13th June, 1879, Herr von Bulow, when submitting the Samoan treaty for the approval of the chamber, observed :

"'Nous ne voulons point fonder de colonie en ce pays, nous ne voulons pas avoir de monopole envers et contre d' autres, nous voulons uniquement etablir autant qu'on peut le faire, que la navigation allemande et le commerce allemande tient la le bon droit et l'egalite de droit.'

"24. Shortly after the conclusion of the treaty with Germany the islands were distracted by civil war, which was brought

to a partial close in the month of December, 1879, by the influence of the treaty powers, but chiefly by the active steps taken by Captain Deinhardt, of His Imperial German Majesty's ship *Bismarck*, acting on the behalf and on the request of the representatives of Great Britain and the United States, as well as those of Germany.

"25. Malietoa Talavoa was then recognized and declared to be king 'for lifetime,' and Malietoa Laupepa was appointed regent.

"26. It may be convenient in this place to state that as far back as 1873, the so-called Government of Samoa consisted of two councils, named respectively the Taimua and Faipule.

"27. These councils existed at the date of the first visit of Colonel Steinberger in the year 1873.

"28. Upon the return of this gentleman from Hamburg in 1875, they, at his instance, increased the number of representative chiefs, re-organized their government to some extent, and elected the chief Malietoa Talavoa as their King. Colonel Steinberger himself became prime minister.

"29. This government, however, broke up in February, 1876, when, at the instance of the American Consul Forster and King Malietoa, the premier, Colonel Steinberger, was removed from Samoa by Captain Stevens, of Her Majesty's ship, *Barracouta*.

"30. King Malietoa was shortly afterwards deposed by the friends of Colonel Steinberger, and an acephalous government was conducted by the chiefs calling themselves Taimua and Faipule.

"31. It was with this government without the concurrence of Malietoa and the strong party following his lead, that the German-Samoan treaty was concluded.

32. "In March, 1879, the Taimua and Faipule placed themselves in the hands of General J. J. Bartlett, described in the Samoan official papers as 'a gentleman of the United States of America.' His connection with the government occasioned some difficulty, but was of brief duration.

"33. The British-Samoan treaty was concluded with the government of Malietoa who soon established themselves in power.

"34. In this matter Sir Arthur Gordon (representing Her Majesty's Government) appealed for an opinion to the different consular officers resident in Apia, the naval officers in command of the English, German, and American ships of war in harbor, and Her Majesty's deputy commissioner and late acting consul, who

unanimously informed him that in their judgment Malietoa was entitled to recognition as a *de facto* king, and was in a position to enter into treaty engagements with Great Britain.

"35. Malietoa was generally recognized as the chief most entitled by birth and actual authority to be king. He was accordingly proclaimed, and anointed king at Mulinuu, on the 24th May, 1879.

"36. This position, as above stated, was subsequently confirmed by the influence and authority of the three treaty powers, in December, 1879 (*vide* articles of agreement signed by the contending native parties on board His Imperial Majesty's ship *Bismarck*, the 23d December, 1879, and witnessed by Captain Deinhardt, Captain Chuden, and Consul Weber).

"37. The party opposed to Malietoa shortly afterwards repudiated their obligations under the agreement referred to, and until the middle or end of June, 1880, the island of Upolu was the scene of constant fighting and disorder.

"38. For the better security of life and property during the continuance of strife, the contending parties had already agreed with the foreign consuls to define and respect a neutral territory in and about Apia. This agreement was made on the 29th May, 1879.

"39. On the 24th March, 1880, the foreign representatives agreed with King Malietoa for the constitution of an executive council for the Samoan Government.

"40. This agreement, however, was not confirmed by the treaty powers. Her Majesty's government were of the opinion that a council of the nature proposed would exercise so preponderating an influence over Samoans, over the officers of Samoa, as practically to throw the government of the islands upon the Three Governments, who would be represented by the executive council.

"41. During 1880 the contending native factions in Samoa seldom ceased quarreling, and petty conflicts were of frequent occurrence.

"42. King Malietoa Talavoa died on the 7th November, 1880, and on the thirteenth of the month the consuls wrote to both war parties proposing a cessation of hostilities.

"43. The King's party accepted, the others declined these proposals.

"44. In March, 1881, Malietoa Laupepa, the Vice-King, was appointed king, the chief of the opposing party protesting, and

notifying that they had chosen Tamasese, a chief of the Tapua family, to be king.

"45. Tamasese was not recognized by the consuls, and on the 28th April, Malietoa Laupepa was received by the captain of the German corvette *Herthe* on board his ship, and saluted as King.

"46. On the 12th July, 1881, an agreement for peace was signed by both native parties on board the United States ship *Lackawanna*.

"47. Peace was thereupon proclaimed, and Malietoa accepted as King, with Tamasese as Vice-King.

"48. Two days afterward several individual fights occurred in Apia, between the party chiefs of the King and the Vice-King. The municipal policemen were severely wounded. Order was temporarily restored by an armed party promptly landed from the German gunboat *Mowe*.

"49. After numerous distractions a new government was inaugurated at Mulinuu on the 12th July, 1882.

"50. The whole of the consular body was present, and the meeting was considered 'a thoroughly representative one.' Malietoa Laupepa and Tamasese were again saluted as King and Vice-King. Nine laws or regulations were framed by this government, and copies thereof sent to the consuls.

"51. With the exceptions of minor difficulties and rumors of divisions among the people, affairs went on more quietly until the middle of the year 1883.

"52. In July of this year King Malietoa complained that the Tupua family (Tamasese) were again plotting, and sought the advice and aid of the consuls.

"53. The consuls promised the exercise of their good offices, acting German consul Von Oertzen stating that he held instructions to the effect 'that so long as Malietoa observed his agreements and did not provoke war, he was to support him, by force, if necessary.'

"54. On the 29th September, 1883, an agreement was signed between this government and foreign representatives, protecting (protracting?) for an indefinite period the municipal convention of the 2d September.

"55. At this period, and owing to a variety of circumstances, commercial and political rivalries in Samoa and the Pacific generally were much quickened.

"56. For reasons which have been explained by the Imperial German Government, its consul-general at Samoa had, on the

16th November, 1884, concluded a convention with the Samoan government providing for the creation of a Samoan-German council of government.

"57. King Malietoa refused or failed to execute the terms of the convention.

"58. In some other matters also King Malietoa offended the German consul-general, who thereupon, on the 23d January, 1885, by way of 'reprisal' seized or attached the sovereign rights of King Malietoa in and over Apia, and hoisted the Imperial German flag on Mulinuu Point.

"59. The reasons given for this act on the part of the German consul-general are given in the annextures forming copies of communications from that officer to the King, the resident consuls, and the public of Samoa.

"60. The act of the German consul was at once protested against by the British and American consuls.

"61. A few days after these occurrences Tamasese, the Vice-King and head of the Tupua party, announced that he had separated from the government. His party issued a proclamation, hoisted a flag, and went into rebellion.

"63. After the lapse of twelve months during which the relations of all parties were much strained, King Malietoa by reason of the pressure brought to bear upon him by M. Weber, was compelled to move from Mulinuu. He then hoisted his flag at Apia within the boundaries of the neutral zone governed by the municipality under the convention of the 2d September, 1879.

"64. From this position it was hauled down by an armed body of seamen landed from his Imperial German Majesty's ship of war *Albatross* on the 23d January, 1886.

"65. This act was again protested against by the British and American consuls.

"67. Upon the departure of the king and his people from Mulinuu, and its seizure by M. Weber, for the company represented by him, the whole country became more disturbed than ever. King Malietoa failing to hoist his flag at Apia, established his government at a village a mile or two west of that place. The Tamasese or Tupua party had already hoisted their flag and fixed their quarters at Leulumœga.

"68. On the 28th April, 1886, Admiral Knorr commanding a German squadron of three ships, arrived at Apia, when it was hoped that a better understanding would be arrived at.

"69. From official and other information it would appear that

the admiral accorded no recognition whatever to King Malietoa or his Government.

"70. On the 16th of the month the squadron left for the North Pacific.

"71. On the 13th, however, Malietoa alarmed by the support he believed was being given by the German authorities to the opposition chief, Tamasese, had applied to the consul for the United States for assistance and protection.

"72. The application was acceded to by Mr. Greenebaum, the United States consul, who on the 14th wrote out a notification, which in consequence of delay in printing, or for some other unexplained cause, does not seem to have been published until the 16th.

"73. Upon the 16th, after the German squadron had left the port of Apia, the United States consul hoisted the Samoan flag under the American colors, as an indication that he had, on behalf of his government, assumed a protectorate over Samoa.

"74. On the same day that the German fleet left, Her Majesty's ship *Diamond* arrived, and on the 20th the United States ship of war *Mohican* also anchored at Apia.

"75. The complications were now daily growing more acute. A meeting was therefore held at the British consulate on the 25th, at which Captain Clayton of Her Majesty's ship *Diamond*, and Captain Day of the United States ship *Mohican* were present, together with the consuls of England and America.

"76. It was then arranged that the two consuls should proceed in the *Mohican* to Leulumœga, and endeavor to bring about a reconciliation with Tamasese, or obtain a promise from him to keep the peace.

"77. Tamasese behaved with rudeness and peremptorily refused to accept advice.

"78. Malietoa then prepared in earnest for war.

"79. The armed factions had now approached within striking distance of each other, though, by the exercise of unremitting persuasion on the part of the British consul, King Malietoa kept his force in camp.

"80. The King declared to the two consuls that the rebel party had been recognized by the German authorities, and that the German flag was flying over Apia, while the German consul kept his (the King's) down by force. He wished, he added, ' to end it at once.'

"81. Further meetings were then held between the consuls,

when the German consul-general happily recognized the undesirability of pushing events to the extreme.

"82. The German flag was then lowered, the attachment upon the municipality of Apia removed, and a joint proclamation issued that neither the consuls nor the respective governments did, or ever had, 'in any way recognized Tamasese as King of Samoa.'

"83. But, notwithstanding these remedial measures, the King notified that he would attack the 'rebels' if they had not returned to their homes within the five days ending the 2d June.

"84. On the 29th May, consul-general Stuebel, in compliance with a promise made to his colleagues, called personally on the chief Tamasese, at Aana, with the object of inducing him to withdraw his forces and abstain from war. The result of this interview was communicated to the American consul in a letter dated the 30th May.

"85. Upon the 8th June the 'representatives of Malietoa and his Government', and the 'representatives of Tamasese and his party,' signed on board the United States ship *Mohican* an agreement of perpetual peace: that they, the two parties, should live 'in friendship and cordial relations,' and 'all forts should be destroyed' and 'no fire-arms be carried by any Samoan.' Since this date an armed truce has existed, both sides buying, chiefly on credit, all the arms and ammunition procurable.

"86. The United States flag continued hoisted for some time. It was lowered, or perhaps, more correctly speaking, not hoisted, upon the 24th August, 1886, since which date the flag of King Malietoa has flown in front of the 'Government offices' at Apia."[1]

[1] Extract from report of John B. Thurston, British Commissioner to Samoa, October 1, 1886; Ex. Doc. No. 238, H. R., 50th Congress, 1st. Session, page 268.

By agreement, the governments of Germany, England, and the United States sent commissioners to Samoa in 1886, to report on the condition of the islands as the basis of further negotiations on the subject. An extract from the report of Thurston, the English commissioner, is here given as being the most concise. The report of George H. Bates, United States commissioner, is of greater length, and is a detailed history of the subject, but agrees in the main with that of Thurston. It may be found in the volume of United States Foreign Relations for 1889, page 237, and also in Ex. Doc. No. 238, H. R., 50th Congress, 1st session, page 137. The report of the German commissioner, Travers, may be found in the same volume, page 261.

To supplement the report of Thurston in several points, it may be said that after Steinberger had been removed from Samoa, a movement was set on foot to annex the islands to the British colony of Fiji. With the purpose of preventing this, the American consul Colmesnil, in 1877, raised the flag of the United States over that of Samoa. In 1878 the American flag was again raised by Consul Griffin, and with a similar purpose.

By the treaty of 1878 with Samoa, the United States acquired the right to a naval and coaling station in the port of Pango-Pango.

From 1879 to 1885, the three powers exercised control jointly through their consuls, but Germany having the greatest material interests in the islands, began to feel that she ought to be allowed to take the lead in the political control.

The Hamburg News of the 7th of August, 1886, published a communication from Apia which probably expressed the German view:—

"There reside in the Samoan group 127 Germans, 62 Englishmen, 26 Americans, 17 Frenchmen, and 13 Chinese. Apia, the chief commercial place of this group, is at the same time the central point of German trade and German interest in the whole South Seas. * * *

"Moreover, four-fifths of the entire importation and exportation are in the hands of German firms. * * *

"The Germans have been most profoundly disappointed in their long-entertained hopes of a 'declaration of protectorate' for the better appreciation and protection of their preponderating interests, and of a comprehensive reform of criminal relations."

In 1885, therefore, the Germans, dissatisfied with the King Malietoa, supported the Vice-King, Tamasese, who went into rebellion. The Governments of England and the United States continued, however, to recognize Malietoa; and in 1886, the American consul Greenebaum, hoisted the American flag at Apia. For this act he was censured and recalled, Harold M. Sewall being appointed in his place. It was at this time that the agents were sent out and made their reports.

In June and July, 1887, a conference was held at Washington, at which the three powers were represented—Mr. Bayard

for the United States, Sir Lionel West for England, and von Alvensleben for Germany.

The United States took the position that Samoa should retain its independence, and be allowed to choose its king, and that the powers should assist the islanders to form a civilized government.

Germany insisted that the natives were not capable of any practicable government, and that the powers should take the government of the islands into their hands; and, further, that, as Germany had the greatest interests at stake, she "should exercise a preponderating influence."

In answer, Mr. Bayard said: that it seemed to him that this proposition was in conflict with the principle upon which they propose to proceed, and that it was one which would increase as they progressed. That is to say, that the ultimate result of admitting such a principle as that, and proceeding upon such a basis, would be to reduce the islands into a Germanic possession.

He said further, that "he wished to draw attention to the fact that the importance of these islands is mainly because of their geographical position. They lie in the pathway of a commerce that is just being developed. The opening of the west coast of North America to civilization and commerce by means of the transcontinental railways had given to this group of islands an interest which they never had before, and moreover we all hope for the penetration of the isthmus in some way or other. If that occurs, a new feature of interest will be added to them. Great Britain and Germany, and Spain, and France, at this time hold the island groups in Polynesia, and something more than mere islands. Great Britain owns Fiji and New Zealand and other islands. He said nothing of the continent of Australia. Great Britain had her settlement on New Guinea. Germany had the Marshal group and the Solomon Islands. She also has a settlement, and a very important one, on New Guinea. Spain has the Carolines; France makes claims to the New Hebrides. With a great ocean front on the Pacific the United States has not acquired a foot of land in that region, but they were the first as a power to make a treaty with the Samoans. Our treaty antedates the rest, and there was in it no special privilege of any kind. There was a cession to the United States for their use for a naval

and coaling station of the harbor of Pango-Pango, which remains now as it was at the time it was ceded. It seemed to him that it was equally important to Germany and to all the other commercial nations and to the United States, that there should be a general line of action tending to secure the neutralization of that group of islands. There is something beyond the mere material present value of the land or the products, and it was for that reason the United States desired to see the group of islands maintained for the common use of nations, and the United States should receive the ready support of Great Britain and Germany in endeavoring to impress upon Samoa its counsels in favor o the proposed government. He would not go into a comparison of the relative importance of the Pacific commerce to the United States or to others. The interest of the United States was very great and quite equal to any other, and perhaps in some aspects greater, because less remote from the United States than from Great Britain and Germany, and because anything that is needed there as outposts these two countries have already acquired. The political policies of the United States are not such as to give the slightest alarm to the commercial interest of any other country. The policy of this Government in respect to acquisition of remote points has been pretty well defined, and it was for that reason that the Government of the United States was more disinterested by reason of its policies and by reason of its position in this matter than perhaps any other government equal in importance and having the same prospective interests in the commerce of the Pacific. Germany had proposed to take the nomination bocause at the time they had a greater amount of land, people, and money. He did not know what would be the result of the land commission upon German claims to title."

The English representative took no active part in the discussions, and assumed a neutral position.

As the American and German views could not be reconciled, Mr. Bayard proposed, July 26, an adjournment of the conference until autumn; and this was agreed to by the others.

In the meantime, the Germans were proceeding with a high hand in Samoa. Four German warships arrived, and active war was begun against Malietoa. On the 24th of August, Commodore Heusner of the German squadron issued the following proclamation:—

"By order of His Majesty, the Emperor of Germany, war has been declared against the chief Malietoa.

"The neutrality of the municipal districts will be respected as long as the security of the German troops is not endangered by agitators within the municipal district.

"I call upon the inhabitants of Apia to assist me in the maintenance of peace and good order in Apia."

On the same day the German consul Becker sent the following communication to Mr. Sewall:—

"I have the honor to inform you that His Majesty, the Emperor of Germany has declared war against the chief Malietoa.

"Germany does not intend to make any alterations in the existing relations between the three treaty powers and the Samoan Islands; but adheres to the conventions concluded between the three treaty powers."

On the next day the German consul informed Sewall that his government had recognized Tamasese as King of Samoa.

On that day also the American and British consuls issued the following proclamation:—

"Whereas the Government of Germany has this day proclaimed Tamasese King of Samoa.

"Now, therefore, we, the undersigned representatives of the United States of America and Great Britain, hereby give notice that we and our governments do not and never have recognized Tamasese as king of Samoa, but continue as heretofore to recognize Malietoa.

"We advise all Samoans to submit quietly to what they cannot help; not to fight, whatever the provocation, but to await peaceably the result of the deliberations now in progress, which alone can determine the future of Samoa."

On August 27th Sewall issued the following proclamation:—

"To all who are under the protection of the Government of the United States:

"Whereas the Commander of the German squadron has proclaimed martial law.

"Now, therefore, take notice that the sentries are commanded to shoot until dead men who do not stop when challenged, but attempt to run away."

Malietoa was now driven into the bush; and Commodore Heusner gave orders for his capture.

On October 10, 1887, Consul Sewall writes as follows:—

"I have the honor to report that on the 17th of September His Majesty King Malietoa gave himself up to the German consul and was taken to the *Bismarck*, the flag-ship of the German squadron.

"Previous to this, while yet in the bush, he wrote two letters (inclosures Nos. 1 and 2)."

"The first is addressed to Samoans, and is Malietoa's farewell to his people.

"The second is addressed to me, and sets forth his reasons for doing what he is about to do. He does this, he states, to avoid bloodshed and save the lives of his people, for Germany is strong and they are weak. He is ignorant, however, of his offence. He declares that he desired to put down the rebellion of Tamasese at its beginning, but was prevented by the American and British consuls. He reminds me of the assurances so frequently given him, and states that he still looks for their fulfillment. He concludes with a declaration that he will never sign away his sovereignty.

"Alarmed by the preparations going on about them, with no prospect of help or of news from the conference which they had been so long awaiting, the chiefs determined to save the lives of their brothers in the bush, and the honor of their King, preferring to have him give himself up, to being taken prisoner, for a Malietoa has never yet suffered this humiliation. They promised the commodore that they would bring in Malietoa by the 17th, if he would delay until then the commencement of hostilities. The commodore agreed, and they immediately sent out messengers into the bush. On the morning of the 17th the King came in. All the morning he sat with his chiefs, and they were all in tears while the last talk was had. Lauati, the Talking Man, in his speech told them that they need not be ashamed; that it was to the powerful stranger, not the Tamasese, to whom they were yielding.

"At two o'clock accompanied by his chiefs and a large number of European residents, Malietoa went to the German barracks and gave himself up. At about three he and the German consul came out, and a boat took them to the *Bismarck*. As Malietoa walked to the wharf large crowds of his people followed, crying and clinging to him as if they could not give him up."

The United States warship *Adams* arrived at Samoa on the 20th of October, 1887, before which time Americans were without protection save that afforded by the consulate. Sewall wrote on November 8th, that the sailors from the German ships were landed on the 14th of October, and were stationed at the Government House, where the Tamasese's flag was flying, the German hospital, the German consulate building, and the municipal jail and court-house.

On the 18th of November, Prince Bismarck wrote to Zedtwitz, chargé d' affaires at Washington, complaining of the conduct of Sewall, and indeed of all the American consuls in Samoa during the previous ten years. He said they were evidently hostile to German interests, and he presumed they were acting without authority from the United States Government. He would, he said, be thankful to Mr. Bayard, if he would lend his assistance in the investigation of this strange fact.

On the 17th of January, 1888, Bayard answered, through a letter to Pendleton, charging the difficulty upon the German consuls, rather than upon the American, and intimated that the German desire for domination in the islands was the cause of the trouble.

In August, 1888, Mr. Sewall went to Washington and left Vice-consul Blacklock in charge of the consulate. On September 4th, Blacklock telegraphed to Bayard, as follows:—

"Samoans at war. General revolt against Tamasese. Affairs more serious than ever."

This telegram was received at Washington September 15th, and Mr. Bayard suggested to the Secretary of the Navy that he send a discreet officer in command of a government vessel to Samoa at the earliest possible day to report fully upon the condition of affairs. Secretary Whitney replied on the 17th, that telegraphic instructions had been sent to Rear Admiral Kimberley to send one of the ships of his command to Samoa for the protection of American interests.

On the 9th of September, 1888, the Malietoa party elected Mataafa as King of Samoa. On the 13th of September, Commander Leary of the American ship *Adams* wrote to Secretary Whitney, as follows:—

"The revolutionists have elected and installed Mataafa, their most important chief in Samoa as King of Samoa, with the name of Malietoa-Mataafa, who is now with and directing their actions.

"At 12.50 P. M. on the 11th (12th by Samoan time) instant, the opposing forces met and fought the greatest battle that has ever taken place in the group, the Tamasese men firing the first shot.

"After about two hours fighting, the Tamasese men were driven from their first fort into the sea, and some escaped by swimming to their boats. * * *

"During this battle, the German sailors of the *Adler* were employed building fortifications on Mulinuu Point, ostensibly for the protection of German property, but Tamasese, with a few men not engaged in the fight, remained there. * * *"

Tamasese had appointed as prime minister a German by the name of Eugene Brandeis, who directed the military operations, and in fact the government in general.

The U. S. war vessel *Nipsic* under command of Mullan arrived at Apia, November 7th, 1888.

On the 5th of January, 1889, Blacklock sent the following telegram to Bayard:—

"Three German war-ships undertaken to disarm Mataafa Landed at night force to prevent retreat. Mataafa's men fired on and forced to fight [December 18, 1888]. Germans routed. 20 killed, 30 wounded. Germans swear vengeance. Shelling and burning indiscriminately regardless of American property. Protest unheeded. Natives exasperated. Foreigners lives and property in greatest danger. Germans respect no neutral territory. Americans in boats flying. American flag seized in Apia Harbor by armed German boats, but released. Admiral with squadron necessary immediately. Officer accompanying this dispatch can be questioned at Auckland where he will remain three weeks."

On the 11th of January, Mr. Bayard telegraphed to Blacklock:—

"Proper measures have been adopted for protection of American interests in Samoa, and to preserve Samoan independence. Admiral Kimberley with frigate *Trenton* starts at once. You will consult freely with him."

Secretary Whitney in instructions to Admiral Kimberley ordered him,

"to protest against the subjugation and displacement of native government of Samoa by Germany as in violation of positive agreement and understanding between treaty powers, but inform the representatives of the German and British Governments of your readiness to co-operate in causing all treaty rights to be respected, and in restoring peace and order on the recognition of Samoan right to independence. Endeavor to prevent extreme measures against Samoans, and bring about a peaceful settlement. If such arrangement can be made on that basis, you will report the same for approval, and you will inform this government as soon as possible after your arrival in Samoa of the condition of affairs and the prospect of peaceful adjustment and whether Germany was acting impartially between the opposing forces when the late conflict occurred."

In a communication to the United States through the German Minister, Count von Arco-Valley, Prince Bismarck wrote, January 13, as follows:—

"We shall carry on the contest which has been forced upon us by Mataafa and his followers, with the utmost consideration for English and American interests. Our military measures have in view only the punishment of the murderers of German soldiers and the protection of our countrymen and their property. As they, on their part, are at war with Tamasese, our interference will necessarily assume the character of assistance to Tamasese.

"In the endeavor for the just punishment of a murderous crime we hope for the co-operation of the treaty powers in Samoa in friendship with us, and we ask the Government of the United States to be good enough to furnish the consuls, and the commanders of its ships of war in Samoa with suitable instructions. Our armed forces there are instructed to avoid and to prevent all injury to neutral commerce and property, and to adopt measures of reprisal and destruction only against the followers of the party which initiated the contest against our troops in a murderous attack.

"We shall, of course, abide by the agreements with America and England with respect to Samoa, and pay due regard under all circumstances to the rights of those powers as established by treaty

In a despatch to Count Arco-Valley, of January 31, 1889, Mr. Bayard informed him that Consul Blacklock had telegraphed that: the German consul in Samoa had declared "Germany at war with Mataafa, and Samoa under martial law." He continued:

"Our minister at Berlin was therefore instructed to make it known at the German foreign office that the United States assumes that German officials in Samoa would in this sense be instructed scrupulously to abstain from all interference with American citizens and their property in Samoa, and that no increase or expansion of German jurisdiction over American citizens or their property would be caused by the German declaration of martial law, nor would such jurisdiction be recognized or conceded by the United States."

On the 1st of February, 1889, Count Arco-Valley, by instruction of Bismarck, sent the following communication to Secretary Bayard:—

"When the state of war was declared against Mataafa the commander of the German squadron issued a proclamation by which the foreigners established in Samoa were subjected to martial law. International law would, to a certain extent, not prevent such a measure, but as Prince Bismarck is of the opinion that our military authority has gone too far in this instance, the military commander has received telegraphic orders to withdraw the part of his proclamation concerning foreigners.

"In negotiation with Mataafa our consul at Samoa has asked that the administration of the Islands of Samoa might be temporarily handed over to him, which demand not being in conformity to our previous promises regarding the neutrality and independence of Samoa, Mr. Knappe has been ordered by telegram to withdraw immediately his command."

During the latter part of January, 1889, the question of a war with Germany was discussed in the press of Europe and America. The vigorous tone of the government of the United States, and the sending of ships of war to Samoa gave some color to the rumors that the United States meant to fight. Admiral Kimberley was ordered to proceed from Panama to Samoa with his flag-ship, the *Trenton*, and on the 20th of Jan-

uary, the *Vandalia* also, sailed from San Francisco for the same destination. With the *Nipsic*, which was still at Apia, there were at the end of February three American ships of war in Samoan waters. The Germans had likewise three ships there present—the *Olga*, the *Adler*, and the *Eber;* while England had but one, the *Calliope.* It is a singular fact that, soon after the arrival of Admiral Kimberley at Apia, all these ships, the *Calliope*, excepted, were wrecked in that harbor by a tornado which swept over the islands. Of the American vessels, the *Nipsic* was afterwards raised and repaired.

On the 4th of February, Bismarck proposed a conference of the three powers for the purpose of settling the Samoan difficulty. Said the German Minister to Mr. Bayard:—

"Prince Bismarck, in consequence, considers it a duty of the participating governments to put an end, by the agreement of the treaty powers, to the troubles which have originated in Samoa, and by restitution of peace among the Samoans themselves, and so make an end of future bloodshed and the horrors of civil war conducted with barbarous cruelty among the natives.

"The best remedy seems to be a resumption of the consultation which took place between the representatives of Germany, England, and the United States in the year 1887 at Washington, and at that time adjourned without any possibility of their representatives coming to any agreement.

"In consequence I have been requested by Prince Bismarck to propose to you to resume with Germany and the British Government the consultation regarding the Samoan question.

"The last conference took place at Washington. According to the equal rights of the three treaty powers it seems proper that the place for the negotiations should change in regular turn. Based upon this opinion, I am directed to invite the Government of the United States to a conference regarding Samoa to take place at Berlin, and a similar invitation has been sent to the British Government.

"I am also directed to declare that any supposition that Germany would not feel satisfied with a neutral position in the Samoan Islands is unfounded, as we have already declared in the last conference (of 1887) it is neither our intention to put in question the independence of the island group nor the equal rights of the treaty powers. We simply desire to create a condition which offers permanent security for bringing to an end bloodshed and decapita-

tion, and which grants permanent safety to the commercial interests of the three treaty powers in Samoa."

The next day, February 5, Mr. Bayard replied:—

"The President having been made acquainted fully with the tenor of the instructions received by you from Prince Bismarck and read by you yesterday for my transcription, he requests me to say that he fully shares in the desire expressed by the prince chancellor to bring the blessings of peace and order to the remote and feeble community of semi-civilized people inhabiting the Islands of Samoa; and that he clearly recognizes the duty of the powerful nations of Christendom to deal with these people in a spirit of magnanimity and benevolence.

"On behalf of the United States Government, the President instructs me to express his acceptance of the proposal of the Government of Germany to resume the consultation held in this city between the representatives of the United States, Germany, and Great Britain, which was suspended on the 26th day of July, 1887, such consultation to be renewed, as it was undertaken, for the purpose of establishing peace and an orderly stable government in the Samoan Islands, on the basis of their recognized independence and the equal rights of the three treaty powers. The resumption of such conference as it is now proposed by Prince Bismarck upon the general lines advanced by each of the three powers, as set forth in the protocols of the conference as far as it has progressed and embracing certain points of agreement, appears to present a hopeful prospect for securing the welfare of the Samoan people, and such a neutralization of territorial jurisdiction as will prevent preponderant control by any nation and secure equal rights of commerce and navigation to all."

Accordingly commissioners of the three powers met in Berlin, April 29, 1889, and on the 14th of June signed a convention for the regulation of Samoan affairs.

John A. Kasson, William Walter Phelps, and George H. Bates represented the United States; Count Herbert Bismarck, Holstein, and R. Krauel, Germany; and Edward B. Malet, Charles S. Scott, and J. C. Crowe, England.

The more important provisions are as follows:—

"It is declared that the Islands of Samoa are neutral territory,

in which the citizens and subjects of the three signatory powers have equal rights of residence, trade, and personal protection. The three powers recognize the independence of the Samoan Government and the free right of the natives to elect their chief or king and choose their form of government according to their own laws and customs. Neither of the powers shall exercise any separate control over the islands or the government thereof.

"It is further declared, with a view to the prompt restoration of peace and good order in the said islands, and in view of the difficulties which would surround an election in the present disordered condition of their government, that Malietoa Laupepa, who was formerly made and appointed king on the 12th day of July, 1881, and was so recognized by the three powers, shall again be recognized hereafter in the exercise of such authority, unless the three powers shall by common accord otherwise declare; and his successor shall be duly elected according to the laws and customs of Samoa.

"Considering that the following provisions of this general act cannot be fully effective without a modification of certain provisions of the treaties theretofore existing between the three powers, respectively, and the Government of Samoa, it is mutually declared that in every case where the provisions of this act shall be inconsistent with any provisions of such treaty or treaties, the provisions of this act shall prevail.

"Considering, further, that the consent of the Samoan Government is requisite to the validity of the stipulations hereinafter contained, the three powers mutually agree to request the assent of the Samoan Government to the same, which when given, shall be certified in writing, to each of the three governments through the medium of their respective consuls in Samoa."

ARTICLE III.

"*A declaration respecting the establishment of a surpeme court of justice for Samoa and defining its jurisdiction.*"

"Section 1. A supreme court shall be established in Samoa, to consist of one judge, who shall be styled chief-justice of Samoa, and who shall appoint a clerk and a marshal of the court; and record shall be kept of all orders and decisions made by the court, or by the chief-justice in the discharge of any duties imposed

on him under this act. The clerk and marshal shall be allowed reasonable fees to be regulated by order of the court.

"Section. 2. With a view to secure judicial independence and the equal consideration of the rights of all parties, irrespective of nationality, it is agreed that the chief justice shall be named by the three signatory powers in common accord; or, failing their agreement, he may be named by the King of Sweden and Norway. He shall be learned in law and equity, and of good repute for his sense of honor, impartiality and justice.

"His decision upon questions within his jurisdiction shall be final. He shall be appointed by the Samoan Government upon the certificate of his nomination as herein provided. He shall receive an annual salary of six thousand dollars ($6,000) in gold, or its equivalent, to be paid the first year in equal proportion by the three treaty powers, and afterward out of the revenues of Samoa apportioned to the use of the Samoan Government, upon which his compensation shall be the first charge. Any deficiency therein shall be made good by the three powers in equal shares.

"The powers of the chief-justice in case of a vacancy of that office from any cause shall be exercised by the president of the municipal council until a successor shall be duly appointed and qualified.

"Section 3. In case either of the four governments shall at any time have cause of complaint against the chief-justice for any misconduct in office, such complaint shall be presented to the authority which nominated him, and if, in the judgment of such authority, there is sufficient cause for his removal, he shall be removed. If the majority of the three treaty powers so request he shall be removed. In either case of removal, or in case the office shall become otherwise vacant, his successor shall be appointed as hereinbefore provided.

"Section 4. The supreme court shall have jurisdiction of all questions arising under the provisions of this general act, and the decision or order of the court thereon shall be conclusive upon all residents of Samoa. The court shall also have appellate jurisdiction over all municipal magistrates and officers.

"Section 5. The chief-justice is authorized at his own discretion, and required upon written request of either party litigant, to appoint assessors, one of the nationality of each litigant, to assist the court, but without voice in the decision.

"Section 6. In case any question shall hereafter arise in Samoa

respecting the rightful election or appointment of king or of any other chief claiming authority over the islands, or respecting the validity of the powers which the king or any chief may claim in the exercise of his office, such question shall not lead to war, but shall be presented for decision to the chief-justice of Samoa, who shall decide it in writing, conformably to the provisions of this act and to the laws and customs of Samoa, not in conflict therewith; and the signatory governments will accept and abide by such decision.

"Section 7. In case any difference shall arise between any of the treaty powers and Samoa which they shall fail to adjust by mutual accord, such difference shall not be held cause for war, but shall be referred for adjustment on the principles of justice and equity to the chief-justice of Samoa, who shall make his decision thereon in writing.

"Section 8. The chief-justice may recommend to the Government of Samoa the passage of any law which he may consider just and expedient for the prevention and punishment of crime and for the promotion of good order in Samoa outside the municipal district and for the collection of taxes within the district.

"Section 9. Upon the organization of the supreme court there shall be transferred to its exclusive jurisdiction—

"1. All civil suits concerning real property situated in Samoa and all rights affecting the same.

"2. All civil suits of any kind between natives and foreigners or between foreigners of different nationalities.

"3. All crimes and offences committed by natives against foreigners or committed by such foreigners as are not subject to any consular jurisdiction; subject, however, to the provisions of Section 4, Article V., defining the jurisdiction of the municipal magistrate of the district of Apia.

"Section 10. The practice and procedure of common law, equity, and admiralty, as administered in the courts of England, may be—so far as applicable—the practice and procedure of this court; but the court may modify such practice and procedure from time to time as shall be required by local circumstances. The court shall have authority to impose, according to the crime, the punishment established therefor by the laws of the United States, of England, or of Germany, as the chief-justice shall decide most appropriate; or, in the case of native Samoans and other natives of the South Sea Islands, according to the laws and customs of Samoa.

"Section 11. Nothing in this article shall be so construed as to affect existing consular jurisdiction over all questions arising between masters and seamen of their respective national vessels; nor shall the court take any *ex post facto* or retroactive jurisdiction over crimes or offences committed prior to the organization of the court."

ARTICLE IV.

"*A declaration respecting titles to land in Samoa and restraining the disposition thereof by natives, and providing for the investigation of claims thereto, and for the registration of valid titles.*"

ARTICLE V.

"*A declaration respecting the municipal district of Apia, providing a local administration therefor, and defining the jurisdiction of the municipal magistrate.*"

ARTICLE VI.

"*A declaration respecting taxation and revenue in Samoa.*"

ARTICLE VII.

"*A declaration respecting arms and ammunition, and intoxicating liquors, restraining their sale and use.*"

ARTICLE VIII.

"*General dispositions.*"

"Section 1. The provisions of this act shall continue in force until changed by consent of the three powers. Upon the request of either power after three years from the signature thereof, the powers shall consider by common accord what ameliorations, if any, may be introduced into the provisions of this general act. In the meantime any special amendment may be adopted by the consent of the three powers with the adherence of Samoa."

"PROCLAMATION OF CONSULS."

"We, the undersigned representatives of the Governments of Germany, Great Britain, and the United States, hereby make known to the people of Samoa that our governments, with a view to the prompt restoration of peace and good order in the Samoan Islands, and in view of the difficulties which would surround an election in the present disordered condition of their government,

have by common accord declared that Malietoa Laupepa, who was formerly made and appointed King on the 12th of July, 1881, and was so recognized by the three powers, shall again be so recognized hereafter in the exercise of such authority.

"We at the same time invite the people of Samoa to take without delay such measures as according to Samoan custom are necessary to reinstate the High Chief Laupepa as King of Samoa.

"DR. STUEBEL,
"H. I. G. M. Consul-General.
"H. DE COETLOGON,
"H. B. M. Consul.
"W. BLACKLOCK,
"U. S. Vice-Consul.

"APIA, November 8, 1890."

At a meeting of the Samoan rulers on December 4, 1889, it was decided that Malietoa should be King, and even Tamasese acquiesced in this arrangement as the best settlement of the question.[1]

REMARKS ON THE MONROE DOCTRINE.

THE declaration of President Monroe, in 1823, had a definite purpose; namely, to defeat the machinations of the so-called "Holy Alliance," which, having suppressed by force of arms all popular demonstrations in Europe, proposed to transfer its activity to this continent, to restore the monarchical authority in the Spanish American republics, and, perhaps, to attack the United States. The declaration was, therefore, a defensive measure the European Alliance had announced a policy which was thought to be dangerous to the interests and peace of the United States, but the particular circumstances which called forth that declaration have passed away forever. Since that time, Europe itself has become to a great degree, democratic;

[1] The correspondence with reference to Samoa may be found in Ex. Doc. No. 238, H. R. 50th Congress, First Session: Ex. Doc. No. 31, Senate, 50th Congress, Second Session; Ex. Doc. No. 58, Senate, 50th Congress, Second Session; Ex. Doc. No. 118, H. R., 50th Congress, Second Session; Ex. Doc. No. 102, Senate, 50th Congress, Second Session; Mis. Doc. No. 81, Senate, 15st Congress, First Session.

and with this change, the spirit of monarchical propagandism has ceased to exist.

The danger of European aggression has been lessened, too, by the fact that the Spanish American States, still struggling for their independence in 1823, are now recognized republics of seventy years' standing. And this is well understood in South America. The Minister of Foreign affairs of the Argentine Confederation said, in 1881, that "happily the day has gone by in which political combinations on this continent had for their principal object the preserving of their independence against foreign aggression and machinations. Europe no longer harbors any thought of conquest or chimerical vindications."

It must be admitted, however, that there is a tendency on the part of several leading European States to extend their dominion in the interest of their navigation and trade. At present this tendency shows itself in the inordinate desire to plant colonies in all places not yet occupied by civilized societies; and it is by no means improbable that, did a favorable opportunity offer itself, they would attempt to gain vantage-ground on the continents or islands of this hemisphere. It ought not to be expected that the United States will be an indifferent spectator of these movements, at least, where their interests are at stake, whether it be a question of the American continents or of islands in the Atlantic or Pacific. But it is not necessary to attempt to stretch the Monroe doctrine so as to include every possible case, nor to exclude other cases from its effect; we have outgrown the Monroe doctrine, and ought to be able to have a foreign policy entirely independent of it. The United States are large in extent of territory, and strong in material resources, and stronger still in their defensive position between two oceans; and there is no longer any occasion as there was in the early part of the century, to fear those "entangling alliances" with European powers, in regard either to European or American affairs. It was not contemplated by Washington, when he so earnestly enjoined upon his countrymen a policy of isolation, that we should always hold aloof from the rest of the world. The danger, as he saw it, would pass away so soon as the infant State should have arrived at the vigor of manhood: there would come a time, he said, when the United States could choose war or peace at their pleasure.

What, then, is the sense of adhering, in the strict letter, to a policy adopted, of necessity, in the early period of our history, but the reason for which no longer exists? In this age of steam and electricity, the different countries of the world have been brought wonderfully near to one another, in comparison with fifty years ago. The United States have interests in all parts of the world, and there may come a time when they could properly exert an influence for good; certainly it is not a time when we should adhere to a Chinese policy of exclusion in respect of the American continents.

Yet on the other hand, are we to cast aside wholly our conservative foreign policy of the past, and enter upon a career of aggression and conquest? In the view of some of our statesmen, the exclusive control of the proposed isthmian canal is but one part of a greater scheme, which includes the annexation of the Hawaiian Islands, of Cuba, and, perhaps, of Mexico. The United States are thus to control the commerce of the Pacific Ocean, as well as that of the Gulf of Mexico and the Caribbean Sea. The Latin American States are to be forced, willing or unwilling, into a commercial union by which their trade is to be mainly with the United States. As the United States delegates to the International American Conference intimated, the "Home Market" theory was to be extended to all the States of the Western Hemisphere.

To carry out this plan requires, of course, the aid of a powerful navy; and indeed that is an important feature of the proposed system; and all this is to be done in the name of the Monroe doctrine.

Perhaps it would be well to take time to consider to what result this policy will inevitably lead us. Is there not danger indeed that we shall change the Monroe doctrine from a defensive into an aggressive policy; that we shall not only keep European powers away from the American continents, but that we shall revive their methods, in extending our boundaries and dominion, or, perhaps, set up an American "Holy Alliance?" When we speak of making the proposed canal our southern coast line, we go far in that direction. We should then be doing, in the supposed interests of trade, what was, in an earlier period of our history, done in the interests of slavery. In adopting such a policy, we should, moreover, ali-

enate the sympathies of the Spanish American States, with their forty-five millions of inhabitants, and force them into the arms of Europe; indeed there have been indications of such a result. Spanish Americans are not slow in detecting signs of aggression on our part. A Central American newspaper declared, on August 4, 1881, that "we should suffer an undeception, if the Government of the United States, representing a great people, ruled by exemplary institutions, should adopt, with the other nations of America, before the world, which looks on with lively interest, a policy, troublesome, radically egotistical, that would sacrifice the sacred principles of justice to the spirit of *mercantilism*, overpowering and dangerously developed."

A very intelligent South American, Mr. Sarmiento, then Argentine Minister in Washington, said, in 1886, "The Federal system is the most admirable combination which chance ever suggested to the genius of man. . . But it is dangerous to convert the Federal system into an invading republic, swallowing ever, without being able to digest. The experiment has never succeeded. . . The Monroe Doctrine must be purified of all the stains by which the hand of man has dimmed its lustre. . . The United States ought to say that it is the country which lies between two oceans and two treaties; and the day after it has said so, the Monroe Doctrine will be accepted by the international law of Europe, thus removing the greatest source of present peril."

Now, as to the much-maligned Clayton-Bulwer treaty, what have been and what are its dangers or disadvantages for us? In the first place its restrictive clauses have effected all that the makers of the treaty expected of them; they have kept Central America from falling under the dominion of England, —a fact of the first importance. Having gained this great object, it would seem hardly just to say to England now: "We have no longer any need of the treaty; we can look after the canal ourselves." England might very well reply, as in 1857, that, in that case, she should insist upon being placed in the same position in Central America which she occupied before the treaty was made. But, aside from this consideration, the Clayton-Bulwer treaty probably offers the best possible solution of the canal question, namely, in the clause which con-

templates the invitation of all interested States to join in the protectorate of the canal, in other words the neutralization of the canal. By the adoption of this plan, the United States would gain all the advantages which a canal would offer, and without the necessity of keeping on foot an enormous navy, or of entering generally upon a career of militarism, which is at this moment the calamity and the danger in European nations. As Dr. Wharton pointed out: "Such an international agreement, entered into by all the great powers, would not be in conflict with the Monroe Doctrine. For an agreement that no powers whatever should be permitted to invade the neutrality of an isthmus route, but that it should be absolutely neutralized so as to protect it from all foreign assaults by which its freedom should be imperilled, is an application, not a contravention, of the Monroe Doctrine. Such an agreement is not an approval of, but an exclusion of foreign interposition." [1]

There would probably be no objection on the part of European States to the United States taking a leading part in the management of the canal; that would be a natural consequence of our position.

The argument of Mr. Blaine as to England's control of the Suez Canal has, of course, no longer any force since, by the joint action of the European powers, on the 29th of October, 1888, that canal has been neutralized.

On the other hand, if we set aside the Clayton-Bulwer treaty, and attempt an exclusive control of the canal, we shall encounter many difficulties. More than half the world is interested, politically or commercially in the isthmian canal; and it is more than probable that all the maritime States of Europe and America would combine to oppose our exclusive control of it. In the case of the Panama route, moreover the sole basis of our claim is the thirty-fifth article of the treaty of 1846 with Colombia, which may be abrogated at any time by a twelve-months' notice on the part of Colombia, and thus leave us without the semblance of a legal right to a protectorate over that route. In regard to the Nicaragua route, it is said that we should be able to control it by annexing Mexico and a part of Central America. Herein lies the real danger of such a policy;

[1] Digest of International Law, II. 243

and the warning of Mr. Sarmiento applies to it. To take into our Union twelve millions of people, of a race totally different from ours in temperament, in traditions and laws, in capacity for self-government, and in their habits and religion, would introduce an element of discord and perpetual trouble, which it would be the part of wisdom to avoid.

As to the question of annexation of territory in general, there is serious danger to our system of government in introducing into it territories which are occupied by any races essentially different from our own. The history and the present political condition of those States, composed of peoples of different nationalities, should be a warning to us not to repeat that fundamental mistake.

THE FISHERIES QUESTION.

It is said there are two sides to every question : and we may add, that the fisheries question forms no exception to the rule. In the dispute about the fisheries between the United States and England, which has been going on for more than a century, each party has apparently come to believe that the other is wholly in the wrong. The truth would seem to be somewhere between these two extremes. The real issue has been so befogged by a mass of doubtful claims and abstruse reasoning that the average man despairs of reaching a definite conclusion in the matter.

Besides the old claim of the United States to a natural right in the British fisheries in America, there have arisen questions of international law, such as the nature of the jurisdiction over the ocean, within the three-mile limit, the question of headlands, the interpretation of treaties, and the rights of vessels under the laws of navigation and commerce.

The subject may be conveniently divided into the following heads, to be discussed as nearly as possible in their historical order :—

1. Did the United States have a right to the inshore fisheries of the British provinces independent of the treaty of 1783 ?

2. Was the article of that treaty granting the liberty to fish in British waters abrogated by the war of 1812 ?

3. Has the article relating to the fisheries of the convention of 1818 been modified by subsequent statutes of the two countries relating to navigation and commerce?

4. What is the rule of international law as to jurisdiction over the three-mile limit? And is this limit to be measured from headland to headland in the case of bays more than six miles wide, or is it to follow the sinuosities of the shore?

5. The Reciprocity treaties of 1854 and 1871.

6. The controversy in recent years.

In any discussion of the history of the controversies about the fisheries between the United States and England, the fact must be recognized that the relative importance of the fisheries as an industry and commercially was very much greater during the colonnial period and for some time subsequently than it is at the present time. In the New England colonies the fisheries not only were the chief source of food at times, but they furnished the first articles of export, and laid the foundation of their commerce and navigation. It was not without reason, therefore, that Lord North's bill, of 1775, depriving Massachusetts, New Hampshire, Connecticut and Rhode Island of the fishery on the Banks of Newfoundland and other places, was expected to "starve them into submission."

England had claimed, as France had done before her, the exclusive right of fishing over a very extensive area of sea—including the Gulf of St. Lawrence and the Newfoundland Banks. When the last of the French territory in this part of America (with the exception of the islands of Miquelon and St. Pierre) was transferred to England by the treaty of 1763, French fishermen were excluded from the fisheries within three leagues of the British coast in the Gulf of St. Lawrence, and fifteen leagues from the island of Cape Breton.[1] By the same treaty Spain formally renounced all her claims to territory and rights in that part of America. It is important to remember that the rule of the "freedom of the seas" and the "three-mile limit" had not then attained a fixed determination.

Under these circumstances, the statesmen of the Continental Congress expected that England would, in negotiating a peace, attempt to exclude the United States from the fisheries of the Newfoundland banks and the Gulf of St. Lawrence.

[1] See extracts from the treaties of 1713 and 1763, *supra*, pp. 1-

But, as important as the fisheries were to them, the members of Congress did not make the right to the fisheries an ultimatum, in the instructions to John Adams, August 14, 1779, to negotiate a treaty of peace.[1] In instructions of the same date for the negotiation of a treaty of commerce, however, the fishing rights are made an important part.[2] What they insisted on here was the right to fish on the "banks of Newfoundland and other fisheries in the American seas anywhere, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation." And Mr. Adams was to endeavor to obtain a "nearer distance to the Gulf of St. Lawrence" and "along the shores of Nova Scotia," and even an occasional use of the shores. There is no intimation in these instructions of any claim to a right in the British shore-fisheries. And indeed, on the 12th of July, 1781, the commission and instructions for the negotiation of a treaty of commerce were revoked, thus leaving no instructions or ultimatum to insist on even a right to the bank or deep-sea fisheries.

On the 27th of October, 1781, the Massachusetts legislature, by resolution, instructed the delegates from that State in Congress to insist on the right to the fisheries; and the resolution having been referred to a committee, the committee reported on the 16th of August, 1782.[3] An extract from this very able report is given above (p. 57), and it will be seen therein that no claim is made to a right to the shore-fisheries of British territory; it is an argument drawn from history and practice to prove that the open sea is not subject to appropriation by any State. The Newfoundland banks, therefore, "the nearest point of which is thirty-five leagues distant from Cape Race, are too far advanced in the Atlantick to be a dependence of the shores."

It appears not to have occurred to the statesmen of the revolutionary period to put forward a claim of right to the shore-fisheries of the territories remaining to Great Britain; indeed they anticipated a hard fight to establish their right to the deep-sea fisheries on the banks. This being the case, how did it happen that by the treaty of peace, the United States obtained the privilege of both the bank and shore-fisheries?

[1] *Supra*, p. 54. [2] *Supra*, p. 55. [3] *Supra*, p. 57.

The fact seems to be that John Adams was determined to get the use of these fisheries regardless of instructions; and gave the British commissioners to understand that this was an ultimatum on the part of the United States.

In the meantime Congress had added to the commission Benjamin Franklin, John Jay and Henry Laurens. On the part of England was Mr. Oswald, as commissioner, assisted by Mr. Strachey and Mr. Fitzherbert.

In one of their discussions which had continued the whole day, says Mr. Adams: "I proposed a new article concerning the fishery; it was discussed and turned in every light, and multitudes of amendments proposed on each side; and at last the article drawn as it was finally agreed to.

"The other English gentlemen being withdrawn upon some occasion, I asked Mr. Oswald if he could consent to leave out the limitation of three leagues from all their shores, and the fifteen from those of Louisburg. He said, in his own opinion, he was for it; but his instructions were such that he could not do it."

From this and from other incidents the American commissioners now appeared to have strongly suspected that Mr. Oswald's instructions did not make the fisheries an ultimatum, that a certain discretion was permitted to him, and Mr. Adams, at least, determined to make a bold strike for the complete right to the whole fishery. He continues:—

"Upon the return of the other gentlemen, Mr. Strachey proposed to leave out the word 'right' of fishing, and make it 'liberty' (for the entire fishery). Mr. Fitzherbert said that the word 'right' was an obnoxious expression. Upon this, I rose up and said, 'Gentlemen, is there or can there be a clearer right? In former treaties,—that of Utrecht and that of Paris,—France and England have claimed the right, and used the word. When God Almighty made the banks of Newfoundland at three hundred leagues distance from the people of America, and at six hundred leagues distance from those of France and England, did he not give as good a right to the former as to the latter? If Heaven in the creation gave a right, it is ours at least as much as yours. If occupation, use, and possession give a right, we have it as clearly as you. If war, and blood, and treasure give a right, ours is as good as yours.'" It must

be borne in mind that here was mainly question of the bank fisheries.

The British negotiators had been willing to concede the use of the high seas as a privilege, whilst they denied it altogether within three leagues of their coasts. But not prepared to resist the argument, they proposed to sign the preliminaries, leaving this question to be adjusted by the definitive treaty. But Mr. Adams would not consent to this, says his biographer (Mr. Charles Francis Adams). "He rose, and with the concentrated power which he possessed when excited, declared that when first commissioned as a negotiator with Great Britain, his country had *ordered him* to make no *peace without a clear acknowledgment of the right of the fishery*, and by their direction he would stand. No preliminaries should have his signature without it. And here he appealed with some adroitness, to Mr. Laurens, who had just taken his place in the commission, and who happened to have been president of congress at the time when that first commission was given. Mr. Laurens had likewise been in sympathy with the original movement that produced the commission, so that he readily responded to the call, and seconded the position with characteristic warmth. And Mr. Jay, without committing himself to an equal extent, virtually threw his weight into the scale.

"This act," continues Mr. Charles Francis Adams, "was the assumption of a . . . prodigious responsibility. For the powers to treat on commerce in which the instructions referred to were inserted, had in the interval been revoked by congress, and the right to the fisheries, although adhered to in argument, had been abandoned as an ultimatum. . . . The stroke proved decisive. The term of persistence dictated to the British by their government, had been reached, and after consultation they announced their readiness to abide by Mr. Adams's article as it stood. Such a victory is not often recorded in the annals of diplomacy."

Mr. Adams had consented, however, to leave open the question of the choice of terms, *right* or *liberty*, to be settled in the definitive treaty; and in the third article of that treaty the word "right" is used in reference to the deep-sea fisheries, and the word "liberty" with reference to the shore fisheries. For the fisheries article of the treaty of peace of 1783, see page 65, *supra*.

It should be noted that the mackerel fishing of the Gulf of St. Lawrence, about which we hear so much in these days, was not in question in 1782; this branch of the fisheries was not developed till fifty years later. The only really important shore-fishing was that for cod on the coast of Newfoundland; and the value of this fishery was much decreased by the prohibition of the treaty to dry fish on that island. Where then is the recognition of a prior right in the United States to the inshore fisheries? It does not appear either in the negotiations or in the third article of the treaty. Mr. Oswald explains in a letter to Mr. Strachey (in the nature of an apology), that they yielded to the vehement representations of Mr. Adams, seconded by the other American commissioners, as to the dire effects to the people of Massachusetts of depriving them of the fisheries.

The part of Mr. Oswald's letter bearing on this subject is as follows :—

"I will next add what was settled as to what passed with the American commissioners, particularly Mr. Adams (the New England member), when we came to treat of this article, and to propose keeping off the Americans to a distance from the shore, in the prosecution of their fishery, as well as drying their fish on the coast of Newfoundland.

"I had sundry conversations with this gentleman on the subject before you came over the last time; when his language was as follows:—

"That the fishery was their all, their bread. That other states had other staples of production; they had none but what they raised out of the sea; that they enjoyed a freedom of fishing time out of mind, and that their people would never part with it; that in depriving them of the privilege in question, we should strike a deeper stroke into their vitals, than any, perhaps, they had suffered since the war commenced. That our refusal was unfriendly, unjust, insidious, since we could not come out in time to overtake them; and when we did come we could not miss them, there being fish enough for all nations, during the whole time we chose to seek for them. But that we grudged that they should avail themselves of the natural conveniency of their situation, only to prevent our (the British) getting somewhat less for that part which it was convenient for us to undertake. That we made no difficulty in accommodating the French in this matter, which of itself

would make their people feel more sensibly the effect of the exclusion. That his constituents were alarmed, and particularly attentive to this question; and sent him instructions that would by no means allow him of signing any treaty in which this privilege should be excepted. That he would never sign any such treaty; that if he were to do so, he would consider it as signing a declaration of perpetual war between England and America. That if things were to come to the worst, their states would support that war of themselves, without the help of France or any other nation. That if we lost somewhat in the sales of our fish by their interfering with us, it would, in part, be made up in the sales of our (British) manufactures, since the more money they had for their fish, the more they would buy of these manufactures.'

"These observations passed (as I have said) at different times in conversation with him (Mr. Adams), some part of which he also mentioned in your hearing.

"And you will remember the other commissioners were equally stiff in refusing to proceed in the treaty, while we proposed to deprive their people of the coast or inshore fishery.

"And also that one of these gentlemen said, that if we insisted on keeping their people at a distance of three leagues from our shores, we could not complain if they also forbade our ships from coming within like distance of the coasts of the thirteen provinces.

"With respect to drying their fish, the same gentleman said he thought, if we would not allow of their landing upon the *unsettled* parts of our shore, at a certain season in the year, they would justly deny us the same privilege in all parts of their country. * * *

"The above is the substance of what the American commissioners said at different times, upon the unpleasant subject of this intended exclusion, and as near their words as I can remember. I had put them in writing, from time to time, as they occurred in my conversation with the commissioners; and when you (Mr. Strachey) came over and showed me the altered plan of the treaty, and how the article was guarded in all the instructions and letters, I own I despaired of any settlement with America before the meeting of Parliament. But there being, happily, a discretionary power, as well regarding the extent as the manner of dispensing with this article, in your instructions, I used the freedom of pointing it out, and insisting on it. And you, very properly (as well as Mr. Fitzherbert), took the benefit of it, and gave your

consent to my signing the treaty. To which, if there is still any objection, I must take my share of the blame, as I took the liberty of mentioning to the secretary of state, in the letter which I troubled you with on your return to London.

"If your wishing for this paper is to answer some purpose in Parliament, in case of challenge on this head, you can judge what parts will be suitable to be brought under public review. Perhaps not many. The best general one is, that, without giving way in this particular, *there would have been no provisional articles.* That is very certain."

In further explanation of the reason which induced the British Government to grant the inshore fisheries, it may be stated that in a certain sense the free navigation of the Mississippi was considered an offset on the other side. Then, too, the dissensions in the ranks of the Whigs after Lord North was driven from office, prevented a strong policy on the part of the government. Shelburne, believing that the negotiation of peace would strengthen his ministry, did not haggle long over a matter so unimportant as he thought the fisheries to be.

2. Was the 3d article of the treaty of 1783 abrogated by the war of 1812?

When the American commissioners, Gallatin, J. Q. Adams, Clay, J. A. Bayard, and J. Russell, sent to negotiate a treaty of peace in 1814, were ready to proceed to work at Ghent, they were met by a notice on the part of the British commissioners, "that the British Government did not intend to grant to the United States gratuitously the privileges formerly granted by treaty to them, of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the British fisheries."

This declaration was based upon the assumption that the fishing liberties accorded to the United States by the 3d article of the treaty of 1783 were in the nature of a grant, and came under the rule that all such treaties were abrogated by a subsequent war between the parties.

The American commissioners had instructions not to give up the fisheries; therefore this declaration of the British commissioners had to be met. Mr. Gallatin proposed the offer of the free navigation of the Mississippi to England as a compensation for the liberties of the fishery; or, in other words, the renewal

of Articles iii. and viii. of the treaty of 1783. To this proposition Mr. Clay and Mr. Russell strenuously objected. Mr. Adams then offered an alternative proposition, namely, "to take the ground that the whole right to the fisheries was recognized as a part of our national independence; that it could not be abrogated by the war, and needed no stipulation for its renewal." (Diary, 4th Nov., 1814.) Some years afterwards Adams said: "The only way in which it was possible to meet the notification of the British plenipotentiaries, without surrendering the rights which it jeopardized, was by denying the principle upon which it was founded. This was done by asserting the principle, that the treaty of independence of 1783 was of that class of treaties, and the right in question of the character, which are not abrogated by a subsequent war." (The Fisheries and the Mississippi, p. 82.)

A proposition embodying this principle was drawn up by Mr. Clay, of which Mr. Adams remarks in his diary (Nov. 7, 1814), "I should have preferred the proposal of Mr. Gallatin's article, as placing the subject out of controversy; but as we could not be unanimous for that, I was willing to take Mr. Clay's paragraph, by which we should reserve all our rights, and at the same time execute all our instructions. Mr. Bayard said, that rather than differ among ourselves, he would agree to substitute Mr. Clay's paragraph, instead of the proposed article, and this was ultimately consented to by us all." (Nov. 14, 1814. The Fisheries and the Mississippi, p. 145.)

"This view of the case was not acceded to by the British commissioners. Each party adhered to its asserted principles, and the treaty was concluded without settling the interest involved." (*Ib.* 83.)

Immediately after the close of the war in 1815, American fishermen were warned off the coasts of the British provinces. The United States protested; and John Quincy Adams, as Minister in London, entered into a correspondence with Lord Bathurst upon the subject. In this correspondence (Am. St. Pap. For. Rel., Vol. V.), and in Mr. Adams's paper on "The Fisheries and the Mississippi" (the beginning of the famous quarrel between Mr. Adams and Jonathan Russell), the American argument is fully set forth.

The Law of Nature is appealed to to sustain the rights of

American fishermen; arguments favoring it are quoted from Vattel and other writers on international law, as well as from speeches of opposition members in the British parliament. But the strictly legal argument of Mr. Adams is leveled against the British assumption that war abrogates all treaties. Stipulations made in contemplation of a state of war, says Adams, are not abrogated by war, as all agree. But another class of articles are equally privileged from abrogation, namely, *executed stipulations*—cessions of territory, demarcations of boundary, acknowledgment of pre-existing rights and liberties—and in it are included the first three articles of the treaty of 1783. (1. acknowledgement of independence; 2. demarcation of boundary; 3. fisheries.)

These are executed contracts and are abrogated by the execution itself. So of all articles the purport of which is the acknowledgment by one party of a pre-existing right belonging to another. The engagement of the acknowledging party is consummated by the ratification of the treaty. It is no longer an executory contract; but a perfect right united with a vested possession, is thenceforth in one party, and the acknowledgment of the other is in its own nature irrevocable. Hence a subsequent war cannot affect such a right.

"A grant of a facultative right, or incorporeal hereditament, and specifically of a right of fishery, from one sovereign to another, is an article of the same description. It is analagous to a cession of territory, and is in fact a partial and qualified cession. The right is consummated by the ratification of the treaty. The possession is vested by the exercise of the faculty.

"So that whether the third article of the treaty of 1783 be considered as an acknowledgment of pre-existing *liberties* or as a grant of them, to be exercised within British jurisdiction, it was in its nature permanent and irrevocable."

Other reasons have been put forward to prove a prior right to the fisheries; and notably by the American counsel before the Halifax commission in 1877; more recently by Mr. Francis Wharton in his Digest of International Law, and by Mr. Bayard in his correspondence of 1886 with Mr. West, the British minister at Washington.—One of these arguments is the fact that the New England colonists aided in conquering the fisheries from France, and that they used them thereafter in common

with other British colonists. And so, as Mr. Wharton says (*Ib.* 302), "The treaty of peace of 1783 was not a grant of independence, but was a partition of the empire, the United States retaining their common share in the fisheries." And again, the treaty was a partition of "natural rights of territoriality." The American commissioners at Ghent went still further, and said, "in consenting by that treaty (1783) that a part of the North American continent should *remain subject* to the British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that part of the coasts, and of drying and curing fish upon the shores, and this reservation had been agreed to by the other contracting party." (The Fisheries and the Mississippi, p. 42.)

These arguments are virtually answered by proving historically the negative of the first question, viz.: that we had not a prior right to the inshore fisheries. But we may add that the contention of Mr. J. Q. Adams and others, that the third article of the treaty stands in the same category with the first and second is scarcely tenable. The recognition of independence in the first article was the recognition of an accomplished fact; it created no new condition of things. The express recognition was in fact superfluous; the negotiation of a treaty of peace was a sufficient acknowledgment of independence. So of the adjustment of boundaries in the second article, the United States occupied certain territory at the end of the war, and if nothing had been said in regard to boundaries in the treaty, they would have held this territory by the rule of *uti possedetis*. But it was more convenient for both parties to agree upon this question. As to fisheries it is admitted universally that a state has the exclusive right to the enjoyment of the fisheries in its marginal waters. At the end of the war, in 1783, the Canadian and Newfoundland fisheries remained in the full and exclusive possession of England, and she could not be dispossessed of any right or part in them without a special act on her part. She chose to grant to the United States liberty of a certain restricted use of those fisheries—a use which would be more and more restricted as the coasts became occupied by settlers. The liberty of the shore-fisheries was therefore in the nature of a grant, not executed but executory,

depending upon the treaty for its validity; and it would fall with the abrogation of the treaty.

Mr. Theodore Lyman (American Diplomacy, Vol. II, p. 90) says, "A certain part of the doctrine, as to the effect of war on the treaty of '83, is undoubtedly sound, but it appears to us, the remark is equally just, that certain portions of the fishing rights or liberties have, from the commencement of the first negotiation with England, been made the subject of treaty regulation. These remarks, of course, do not apply to the bank, or deep-water fisheries, about which all formal stipulations are needless."

So, Dr. Woolsey, in the first editions of his International Law, said, that at and after the treaty of Ghent, "it was contended by the American negotiators, *but without good reason*, that the article of the peace of 1783, relating to the fisheries, was in its nature perpetual, and thus not annulled by the war of 1812." In later editions of his work, Dr. Woolsey has substituted for the phrase "*but without good reason*," the phrase "*but for reasons which Great Britain would not accept.*" No explanation is given for this change in the text; it does not follow, however, that the author had changed his opinion.

As to the sentimental argument based upon the conquest of the fisheries from France, "by the common sword and mingled blood of Americans and Englishmen," it is almost too much to believe that it was ever put forward in seriousness. We might, for the same reason, claim a common right in the provinces of Nova Scotia and Quebec. Neither does the fact that these fisheries were used in common before the separation from England give the Americans the right to use them after the separation. While the New England people were British subjects, they had duties to perform toward that country as well as privileges to enjoy; the Revolution put an end to both.

Furthermore, if the argument against the abrogation of the fisheries article is sound, why did not the same rule apply in respect of the navigation of the Mississippi? By the 8th article of the treaty of 1783, the free navigation of that river was conceded to England; and yet Mr. Clay held it to be abrogated, and the other members of the commission acquiesced in that view. And yet the 3d and 8th articles are

precisely similar ; each grants a certain privilege in foreign territory.

As the two governments could come to no agreement upon the question in dispute, a compromise was effected in 1818, by the 1st article of the convention of that year.[1]

By this treaty England again granted certain privileges to American fishermen, though very restricted in comparison with those granted by the treaty of 1783. And thus it would seem as if the United States had waived their old claim of a pre-existing right to the shore-fisheries.

But those who contend that the fisheries article of the treaty of 1783 was not abrogated by the war of 1812, see in this first article of the convention of 1818 a complete confirmation of their views. The clause, they affirm, by which the "United States hereby *renounce* forever any liberty heretofore enjoyed or claimed, etc," was, when accepted by England, a formal acknowledgment on her part of a pre-existing right of "unbroken existence." "The treaty" says Dr. Wharton, "is not a grant of fisheries by Great Britain to the United States, but a grant by the United States to Great Britain of certain restrictions on fisheries which the United States already owned." And therefore, "the right of territoriality in Canadian waters and shores thus recognized as existing in our fishermen brings with it the incidents of such territoriality. They may purchase, as may any other visitor, to whom territorial rights are given, whatever is needed for their use. They must not 'abuse' these 'privileges.' They must not smuggle, and what they buy must not be bought for the purpose of shore-fishing." It is contended therefore that the clause admitting American fishermen to "enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, *and for no other purpose whatever*," did not prohibit them from purchasing bait and other supplies intended for use in the deep-sea fisheries. This would seem to be a somewhat forced construction of the first article, even if there were not strong evidence against it, at least in the case of bait. In the protocol of the American commissioners of the 17th of September,

[1] *Supra*, p. 79.

1818, the purchase of "bait" was included among the privileges demanded in addition to those of "shelter," "repair of damages, etc;" but this demand was not allowed by the British commissioner, and the word bait does not appear in the final draught of this article.

In view of the history of the negotiation, and of the plain sense of the language used, it is difficult to avoid the conclusion that the prohibition expressed by the phrase "and for no other purpose whatever," was intended to convey the ordinary meaning of the terms used; that is, that the American fishermen were limited to the four privileges enumerated. It is hardly a proof to the contrary, that the act of parliament of the next year (59 George III.) to carry the treaty into effect, did not impose penalties for the obtaining by United States fishermen of bait and supplies. England had at that time other laws which prohibited such trade, and which she might have considered sufficient for the purpose.

Although treaties have a strong analogy to private contracts, yet we should not forget that they cannot be subjected to those refinements of interpretation that courts of law apply to contracts. It is not competent for one of the contracting parties to import into a treaty a construction, based upon the *ex parte* interpretation of its text, which is not accepted by the other party; for unlike private contracts, treaties unfortunately have not for their interpretation and enforcement a legally constituted and impartial tribunal.

In the case of the convention of 1818, the British Government has never accepted the American view of the first article as establishing a prior right to the Canadian shore-fisheries. The concessions made by the convention of 1818 in regard to the fisheries, were evidently for the sake of putting an end to an aggravating dispute, and prevent the collisions that were constantly occurring in the fishing grounds. This argument of "a prior right to the fisheries," which John Quincy Adams invented in 1814, because, as he said, he could find no other which would meet the British position, has nevertheless dazzled the intellect of American statesmen to the present day. It has as little foundation in history, as it has in law, and would better be left cut of account in future discussions of the subject.

Unfortunately the treaty of 1818 proved to be ambiguous in another important particular. The clause in question reads as follows:—And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish, *on or within three marine miles of any of the coasts, bays, creeks or harbors* of His Britannic Majesty's dominions in America, not included in the above-mentioned limits: Provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever."

It was, and is, contended, on the part of the United States that "three miles" from the "bays, creeks etc," meant three miles from the shores of those bays, etc., following their sinuosities. Therefore all bays more than six miles broad would be free to American fishermen, except within the three-mile limit.

The British construction of the language was, on the other hand, that "three miles from a bay," etc., meant three miles from the mouth of the bay, in other words, three miles from a line drawn from headland to headland of the bay. Moreover this construction was applied not only to the great arms of the sea, as the Bays of Fundy and Chaleurs, but also to all indentations of the coast, as the north coast of Prince Edward Island from North Cape to East Cape, and the northeast coast of Cape Breton, from North Cape to Cow Bay. A line drawn between those points would be in some places as far as thirty miles from the coast.

Even granting that the British interpretation of the treaty was correct as to the "headland" question, it still remained to be determined what were "British bays, etc." For the United States maintained that it was never intended to include the great bays; in the very paragraph above quoted, it is stipulated that American vessels are to have the privilege of seeking shelter and repairing damages in the bays within which they are forbidden to fish. But "there is, of course, no shelter nor means of repairing damages for a vessel entering the Bay of Fundy, in itself considered. It is necessary, before relief or succor of any kind can be had, to traverse the broad

arm of the sea, and reach the bays and harbors referred to in the convention of 1818." (Edward Everett). So by the treaty of 1783 the Americans have the liberty to cure fish "on any of the bays, harbors, etc., of Nova Scotia." It was said in answer that if the negotiators of the convention had only intended to exclude American fishermen from bays within three miles from their shores, then the use of the words "bay, etc.," was quite superfluous.

As no agreement has ever been arrived at as to the meaning of the treaty in this point, much reference has been made in recent years to international law and usage. It is asserted on the part of the United States, that the Bays of Fundy and Chaleurs could no more be appropriated by any state than could the Bays of Biscay, Bengal, or the Gulf of Mexico. The Bay of Fundy is over sixty miles wide at its entrance, and the Bay of Chaleurs is nearly as wide.

The usage of nations has tended to restrict territorial jurisdiction over large bodies of water; and although there is no rule of international law fixing an absolute limit in this respect, the whole spirit of it is opposed to such a claim as that of England in the Bay of Fundy and in many other cases.

On the other hand, the contention of the United States, that only bays six miles, or less, in width can be considered as territorial waters, has, to say the least, no better foundation in law or practice. Probably most maritime states claim exclusive jurisdiction over bays of a greater width than six miles. Certainly that can be affirmed of France, England, and the United States. For instance, France claims the exclusive right to the Bay of Cancale, which is seventeen miles wide. England claims the Bristol Channel (Queen *v.* Cunningham, Bell, C. C. 86); also Conception Bay in Newfoundland, which is twenty miles wide (Direct U. S. Cable Co., Limited v. Anglo-American Telegraph Co., Limited, 1877, 11 App. Cases, 394). The decision in this case is an instructive discussion of authorities and principles. The United States would probably claim the exclusive jurisdiction over all the bays on their coast. In the case of the British ship *Grange* taken by a French cruiser in Delaware Bay in 1793, she was restored to her owner on the opinion of the Attorney-General, as being siezed in the territorial waters of the United States. Mr.

Seward said, in 1852, in a debate in the senate, that the United States argument proved too much. It would divest the United States of Boston Harbor, Long Island Sound, Delaware and Chesapeake Bays, Albemarle Sound, etc.

In the American brief before the Halifax commissioners in 1877, reference is made to a number of writers on international law to sustain the American view of this question. But of the authors quoted not one lays down the rule of a definite distance of six miles necessary to give exclusive right to a bay or gulf.

The nearest to anything like a general rule to be drawn from the opinion of these writers is, that bays, gulfs, etc., whose entrance may be defended by cannon, ought to be susceptible of appropriation by the neighboring state. In view of the present range of cannon, this would give a width of about fifteen miles.

As between England and France the exclusive right of fishing is limited by treaty to bays ten miles wide at the mouth. (Treaties of 1839 and 1867.)

And yet Senator Edmunds, Chairman of a Committee of Investigation, said in 1886:—"The Committee is therefore clear in its opinion that any pretension that exclusive British jurisdiction exists, either by force of public law or by this treaty (1818), within headlands embracing such bodies of water (bays, creeks, and harbors), and more than six marine miles broad, must be quite untenable." (Edmunds Report on the Fisheries.)

Mr. W. E. Hall sums up the question as follows:—

"On the whole question it is scarcely possible to say anything more definite than that, while on the one hand it may be doubted whether any state would now seriously assert a right of property over broad straits or gulfs of considerable size and wide entrance, there is on the other hand nothing in the conditions of valid maritime occupation to prevent the establishment of a claim either to basins of considerable area, if approached by narrow entrances such as those of the Zuyder Zee, or to large gulfs which, in proportion to the width of their mouth, run deeply into the land, even when so large as Delaware Bay, or still more to small bays, such as that of Cancale." (International Law, 2d edition, p. 141.)

In regard to the dispute between the United States and Eng-

land, the most reasonable and practicable method of adjustment would seem to be, for the two governments to come to an agreement, considering the circumstances of each case, what bays, etc., should be free, and what closed.

The first discussion of this question began in 1824, on the seizure of two American fishing vessels—the *Reindeer* and the *Ruby*, on July 26 of that year. But the rule prohibiting Americans from fishing in the large bays seems not to have been rigidly enforced until the year 1839, at which time the correspondence took a definite shape. (Records of the Halifax Commission, p. 104.)

On May 10, 1843, the American schooner *Washington*, was seized in the Bay of Fundy, ten miles from shore. A long correspondence followed between Mr. Edward Everett, American Minister at London, and Lord Aberdeen.

In August, 1844, the American schooner *Argus* was seized while fishing off the coast of Cape Breton, under similar circumstances.

In 1845 the rule as to the Bay of Fundy was relaxed by the British Government.

Under the Claims Convention of 1853, the case of the *Washington* was referred to a joint commission, and on the disagreement of the Commission, was decided by the umpire, Mr. Joshua Bates, of London. His decision was in favor of the United States, on the ground that the Bay of Fundy could not be considered a British bay.

As early as 1847 England had proposed a reciprocity treaty; but no agreement being come to, the relations of the two countries became more and more critical; the excitement was increasing and war was talked of, when, in 1854, Lord Elgin came to Washington and had a conference with Mr. Marcy. This resulted in an agreement for a reciprocity treaty, which was soon after ratified.[1]

It appears from this treaty that there was a free exchange of almost all the products of the land and the sea, including many of the raw materials of manufacture.

This arrangement seems to have worked to the satisfaction of both parties, until the high taxes necessitated by the civil

[1] *Supra*, p. 90.

war so enhanced the cost of living and the price of labor in the United States, that the American farmer could not, it was contended, compete with the Canadian farmer in the production of those articles included in the free list of the reciprocity treaty. The United States Government, too, found itself hampered by its inability to levy internal revenue upon those American productions, which under the treaty, came in free from Canada. The government, said John Sherman, thus lost $5,000,000 on the single item of lumber. As to the fishing interest, there was little or no complaint from that quarter.

In spite, however, of these complaints against the treaty, it is not probable that the resolution for its abrogation would have passed Congress when it did, had it not been for the attitude of hostility toward the United States assumed by Canada, as well as England, during our Civil War. The St. Albans raid of 1864, and the apparent sympathy with the raiders on the part of the Canadian Government and people, seems to have caused an outburst of indignation in the United States, and this gave the chance for those who had before wished to abrogate the treaty.

The resolution passed the House, in December, 1864, by a vote of 88 to 54. It passed the Senate in January, 1865, by a vote of 33 to 8.

Doubtless this was an unwise thing to do, as, in all likelihood, the treaty could have been modified by mutual agreement. Still it might well be asked of those Canadians who find so much to censure in the American action on that occasion, to explain the cause of their open sympathy with the slaveholding states of the Union, and their bitter enmity to the North, their nearest neighbors, to whom they were so closely bound by interests of commerce.

In accordance with the joint resolution of Congress, notice of abrogation was given the 17th of March, 1865, and took effect twelve months later,—the 17th of March, 1866.

It will be noted that the stipulations of the reciprocity treaty in regard to the fisheries were "in addition to those of the convention of 1818;" and hence when the reciprocity treaty was abrogated, the fisheries arrangements rested again upon the convention of 1818. And of course all the old disputes were revived.

England, with the hope of negotiating a new treaty, and to prevent in the meantime, aggravating collisions, resorted to the system of issuing licenses to American fishermen, permitting them to fish in the inshore fisheries. The first year, 1866, the license fee was fixed at 50 cents a ton, and 354 American vessels took out licenses. The next year the fee was raised to one dollar per ton, and the number of vessels taking them dropped to 281. In 1868 the fee was raised to two dollars per ton, and only 56 licenses were taken out. In 1869 with the same fee only 25 licenses were taken out. It was said by our fishermen that a fee of two dollars per ton was virtually a prohibitive tax. If this be true, why is it that in all Canadian versions of the case, it is made a special point of complaint, that the American fishermen refused to take out licenses? Moreover the license fee is represented as merely nominal, and nothing is said about the increase from fifty cents to two dollars.

In 1870 the Canadian Government, which now began to take the fisheries question into its own hands, induced the British Government to issue no more licenses to foreign fishermen, and preparations were made to enforce the laws against them. Many seizures took place during the summers of 1870 and 1871.

Negotiations for a new reciprocity treaty had failed for the reason, as President Grant said, that no citizen of the United States would be benefited by reciprocity; "our internal taxation would prove a protection to the British producer, almost to the protection which our manufactures now receive from the tariff."

But there were many other questions of dispute between the two nations pressing for a settlement, that of the *Alabama* being the most important; and an agreement for their adjustment was finally reached by the signing of the treaty of Washington, the 8th of May, 1871.

The articles of this treaty relating to the fisheries are the 18th to the 25th and the 33d.[1]

On account of a delay in passing the necessary laws, the fisheries articles did not go into effect until the 1st of July, 1873.

The next step in the procedure was the appointment of the

[1] *Supra*, p. 98.

commissioners, in accordance with the provision of the 23d article. And here we come upon certain proceedings of the British Government, which have called forth much adverse criticism on the part of the United States. The facts briefly stated, as shown by the correspondence, are as follows :—

In a conversation between Mr. Fish, Secretary of State, and Sir Edward Thornton, British Minister at Washington, held some time previous to the 1st of July, 1873, the question of the appointment of a third commissioner was discussed. Sir Edward Thornton suggested the name of Mr. Maurice Delfosse, the Belgian minister at Washington. Mr. Fish replied that on account of the peculiar treaty relations between England and Belgium, the appointment of Mr. Delfosse would not be acceptable to the United States, and requested the suggestion of other names. Lord Granville, British Foreign Secretary, had sent a telegram to Thornton suggesting Delfosse. As no other names were mentioned on the part of England, on the 7th of July, 1873, Mr. Bancroft Davis, acting secretary of state, wrote to Thornton proposing the names of the ministers at Washington of the following states :—viz., Mexico, Russia, Brazil, Spain, France, the Netherlands, and Italy. This list included all the foreign ministers at Washington who were, by their knowledge of the English language, fitted for the position, excepting the Belgian minister, whose name was omitted for the reasons stated above.

On the 19th of August Sir E. Thornton replied that he had informed Lord Granville of the objection of the American government to Mr. Delfosse; but that Granville had again telegraphed him to ask the American Government to accept Delfosse, and "fears that if the two governments cannot come to an agreement, there will be nothing for it but to leave the selection to the Austrian Ambassador at London." Thornton hopes that Fish will consider the matter. There was no reply to the proposal of Davis. On the 26th of July Thornton writes that the Canadian government, "strongly objects to the appointment of any of the foreign ministers residing in Washington as the third commissioner."

On the 6th of September, Fish asked Thornton to suggest some one else. On the 24th, Thornton by order of his government proposed to leave to the ministers of England and the

United States at the Hague the selection of some Dutch gentleman. As the time within which the joint appointment could be made would run out on the 30th of September, the American government declined to accept this proposal. Mr. Fish added that the American minister at the Hague had been but recently appointed and was therefore, not sufficently acquainted with people of Holland to make an intelligent selection.

Up to this point it would seem that the British government refused to propose any name except the single one objected to previously by the American government; and that this objection was not without reason, it was shown that in discussing the selection of the Geneva commissioner in 1871, Lord de Grey said he "did not name Belgium or Portugal, because Great Britain had treaty arrangements with them that might be supposed to incapacitate them."

The Canadian government preferred the old reciprocity treaty to the arrangement under the treaty of 1871, and now suggested that an attempt be made to renew the reciprocity policy. Accordingly a delay in the Halifax project was granted for this purpose.

In 1874 the draft of the proposed treaty was submitted to Mr. Fish by Sir Edward Thornton.[1] It was based on the third article of the reciprocity treaty of 1854, but with a large extension of the list of articles of free exchange even including some manufactured articles. The fisheries arrangements were to be essentially as in the old treaty. Apparently Mr. Fish made no objection to the draft, and the President submitted it to the Senate for its approval. The Senate did not act upon the matter till February 3d, 1875, and then refused its assent. All thoughts of a new reciprocity treaty were therefore at an end, and the question of the Halifax commission was revived. On the 21st of April, 1875, Sir Edward Thornton writes to Mr. Fish urging the sending of an indentical note to the Austrian ambassador at London, to request him to name the third commissioner. The correspondence as published makes a break at

[1] Accts. and Papers, (41), Brit. Doc. 830, Stat. Papers, U. S., No. 4, 5 March—7 August, 1874.

The draft of the treaty is at the end of the volume, p. 194.

See also, Cong. Rec. Vol. 3, Pt. 2, 43d Cong. 2d Sess., January 28, February 23, 1875, p. 929.

this point of over a year, and nothing definite seems to have been done until the beginning of the year 1877.

In a despatch of February 13, 1877, to Pierrepont, American minister at London, Fish says that on account of a desire to finish the business before the expiration of the President's term of office, he had told Thornton on the 1st of February that if the British government should propose Delfosse, the government of the United States would not oppose his appointment. This proposal was readily agreed to on the part of England; but to carry out the former arrangement of the treaty the method of bringing about this result was to be by an informal, not to say secret, suggestion to Count Beust, the Austrian ambassador at London. On the 9th February, Fish writes to Beale, American minister at Vienna, "Considerable difficulty having been experienced in the selection of the third commissioner, it has finally been agreed between the two governments that the appointment of Delfosse by the Austrian ambassador at London will be acceptable to the two governments, and that such appointment be requested. But on this question you will not speak officially, in any way, as the joint inclination concerning the wishes of the two governments will be conveyed to Count Beust when His Majesty shall have permitted him to act as required." It would then seem that Delfosse was finally appointed at the suggestion of Mr. Fish.

The other arrangements for the commission were soon perfected. The other two commissioners were Sir Alexander Galt, on the part of Great Britain, and Ensign H. Kellogg, on the part of the United States. The agent of the United States was Judge Dwight Foster, assisted by Richard H. Dana and W. H. Trescot as counsel. The British agent was Francis C. Ford, assisted by Joseph Doutre, of Montreal, S. R. Thompson of New Brunswick, W. V. Whiteway, of Newfoundland, Louis H. Davis, of Prince Edward Island, and R. L. Weatherbee, of Nova Scotia, as counsel. The first meeting of the commission took place on the 15th of June, 1877.

The question for the Commission to determine was whether the concession to American fishermen by article 18 of the treaty of Washington, to fish within the three-mile limit of the British provinces, was more valuable than the concession to British fishermen by articles 19 and 21, to fish in American

waters, and to import their fish into the United States free of duty. Canada's claim for compensation for the privilege of buying bait and supplies and for transshipment of cargoes was disallowed by the Commission.

In accordance with article 33 of the treaty of Washington, the fisheries clauses were to remain in force ten years, and a further period of two years from the time either party should give notice of a desire to terminate them.

For the privileges conceded during these twelve years, Canada and Newfoundland claimed compensation to the amount of $14,880,000, a yearly sum of $1,240,000. The United States, on the other hand, contended that the remission of duties on Canadian fish was a fair compensation for the liberty of fishing granted by the 18th article of the treaty. But the Canadian counsel argued that the remission of duties benefited the American consumer equally with the Canadian exporter, and therefore it did not form a subject for compensation. In this view of the case the only thing to settle was the value of the concession in the 18th article.

Whether the majority of the commissioners took this view of the case or not does not appear. They say, that, having carefully and impartially examined the matters referred to them, according to justice and equity, in conformity with the solemn declaration made and subscribed by them on the 15th day of June, one thousand eight hundred and seventy-seven, they:

"Award the sum of five millions five hundred thousand dollars in gold to be paid by the government of the United States to the government of Her Britannic Majesty in accordance with the provisions of the said treaty.

"Signed at Halifax this twenty-third day of November, one thousand eight hundred and seventy-seven.

"MAURICE DELFOSSE.
"A. T. GALT."

"The United States Commissioner is of opinion that the advantages accruing to Great Britain under the treaty of Washington are greater than the advantages conferred on the United States by said treaty, and he cannot therefore concur in the conclusions announced by his colleagues.

"And the American commissioner deems it his duty to state further that it is questionable whether it is competent for the board to make an award under the treaty except with the unanimous consent of its members.

(Signed) "E. H. KELLOG,
"Commissioner."

The United States paid the award with some grumbling, and with a protest against its being made a precedent in any future arrangement. It was the almost unanimous opinion in the United States that the amount of award was excessively great; and the resolution was immediately taken by Congress to give notice of the intention to abrogate the treaty at the earliest possible moment. Accordingly notice was given in 1883, and the fisheries articles of the treaty of Washington were terminated on the first of July, 1885. Again, therefore, the basis of the fisheries arrangements was thrown back upon the convention of 1818.

In the hope of being able to negotiate a new treaty, the American fishermen were, by mutual agreement, permitted to fish in the British waters during the summer of 1885. As Congress refused to assent to the appointment of commissioners to negotiate a new fisheries treaty, the British government, in the spring of 1886, ordered the seizure of American fishermen for the violation of the convention of 1818, and of the Canadian customs laws; and once more the old controversy was reopened. The first case of the seizure of an American vessel, in 1886, was that of the *David J. Adams*, May 7, in Digby Harbor, and involved the question of the right of an American fishing vessel to buy bait in the British waters not free to such vessel for purposes of fishing. Other cases followed which brought up the whole subject of the right to buy bait and supplies other than the *wood* and *water* mentioned in the last article of the convention of 1818.

To follow the question back to the date of that convention, we find that the United States, by the said convention, "renounced the liberty to fish" in certain defined waters; but American fishermen were permitted to enter the same for the "*purposes of shelter, of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose what-*

ever." The act of parliament passed the next year, 1819, to carry this convention into effect, imposed no penalties for the purchase of bait or other supplies, and it would seem that American fishermen went on buying those articles as they had done before; and there is no record of any proceedings against them therefor until 1870.

But granting that the convention intended to prevent such traffic at that time, it was contended on the part of the United States, that the fisheries article of that convention had been modified by subsequent statutes of the two countries.

Mr. Bayard said, in his correspondence with Sir Lionel West, May 10, 1886, "But since the date of the treaty of 1818 a series of laws and regulations importantly affecting the trade between the North American provinces of Great Britain and the United States have been respectively adopted by the two countries, etc."

In order to understand this general statement, it is necessary to set forth more exactly the commercial relations between the two countries existing at the date of the negotiation of the convention of 1818. The important thing to note is that commerce carried on in vessels of the United States was at that time excluded absolutely from the British North American ports. Whatever partial and temporary suspensions of the old navigation laws had been granted before the war of 1812, were entirely discontinued after the close of that war. After a vain attempt to secure a relaxation on the part of England, of these navigation laws, the United States resorted to retaliatory measures by the acts of Congress of 1818 and 1820.

Parliament then relented somewhat; and on the 24th of June, 1822, passed an act permitting American vessels to enter certain colonial ports, but, as John Quincy Adams said, "under heavy and burdensome restrictions." This act was repealed and a more liberal measure passed by Parliament, July 5, 1825. But as the United States did not hasten to take advantage of this concession, it was withdrawn in so far as they were concerned, by the order in council of July 27, 1826. On their side, the United States, by proclamation of the President, March 17, 1827, returned also to the earlier restrictive measures. When General Jackson became President in 1829, he renewed the negotiations with England for more liberal trade

relations; and he was able to announce by proclamation of October 5, 1830, the opening of British colonial ports to American vessels, and a similar concession to British vessels on the part of the United States. The Imperial Shipping and Navigation Act of 1849 removed the last of the British restrictions upon commerce, and marked the transition to the new free-trade policy.

Now it was contended by Mr. Bayard that these subsequent laws and regulations had worked a modification in the first article of the convention of 1818. Under the treaty of 1783 fishing vessels enjoyed, until 1812, privileges in British North American ports, not accorded to trading vessels; after the war of 1812, fishing vessels were put upon the same footing with trading vessels; that is, they were not permitted to enter Canadian ports. But by the convention of 1818 they were again granted special privileges; besides the liberty to fish on certain shores, they were permitted to enter the forbidden ports for purposes deemed absolutely necessary to vessels navigating the adjacent waters, and "for no other purpose whatever." It will be seen, therefore, that that clause put no unusual restriction upon fishermen; but, on the contrary, it made to them concessions not allowed to trading vessels.

Now it was the question, whether, if these ports had been open to American vessels in general for purposes of commerce, any restrictions would have been placed upon fishing vessels by the convention of 1818; and, further, when such ports were afterwards thrown open to all other vessels, whether there was good ground for retaining the restriction upon fishing vessels. In other words, the American contention was that by a fair interpretation of the treaty, the intention of the parties at the time of its negotiation should be considered, rather than a literal construction of the words used.

The seeming restrictions in the language of the treaty were not such at the time it was made, and when all trade restrictions were removed by England, fishing vessels should enjoy the benefit of free commerce, and not be held to an arrangement made under very different conditions.

England answered that the above-mentioned changes in the laws and regulations of commerce and navigation had not changed the status of fishing vessels under the treaty; that

they had always been considered as a special class of vessels, which possessed no commercial privileges, and were subject to regulations different from those applied to trading vessels. Furthermore, the convention of 1818 recognized this distinction, and therefore the United States could not confer a commercial character upon vessels fitted out for fishing purposes.

The United States contended, on the other hand, to quote Secretary Manning, that:—

"The only question (as to what is an American vessel) is this: Has the vessel conformed to the laws, not of a foreign country, but of the United States? In the decision of that question her papers must be *prima facie* evidence against all the world. * * * The permission to touch and trade given to fishing vessels has been understood by this department for nearly a hundred years as conferring upon the vessels a right to land and to receive on board a cargo of merchandise, in the same manner as if she were not engaged in the fisheries. On the return of the vessel to the United States, she is required to make a regular entry, and to be in all respects subject to the regulations prescribed for vessels arriving from foreign ports."

By a law of Congress of the 18th of February, 1793:

"Whenever any vessel licensed for carrying on the fishery, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port."

The form of this permit is as follows:—

United States of America,
District of .....,
Port of .....,
....., 188 .

Permission is hereby granted to ....., Master of the..... named the ..... of ..... burden....., which .... was licensed for carrying on the .....fishery, by .... collector for the district of ....., in the state of .....

....., on the ..... day of ....., to touch and trade at any foreign port or place during her voyage presently to be made.

Given under ..... hand and seal, the day and year above mentioned.

....
Collector.

.....
Naval Officer.

This permit to "touch and trade" appears to be an anomalous document. When a trading vessel sails for a foreign port, she must take out a *clearance*—a certificate given by the collector of a port, stating that the master (named) of a ship (named and described), bound to a port (named) has entered and cleared his vessel according to law.

Mr. Sabine says, in his report, page 159: "Still further to encourage the prosecution of the fisheries, an act of 1793 authorized the collectors of customs to grant vessels duly licensed permits to touch and trade at any foreign port or place, and under such documents to procure salt and other necessary outfits without being subjected to the payment of duties. This act, which is still in force (1853), has proved extremely beneficial to our fishing vessels in certain emergencies; but it may be admitted that its privileges are liable to be abused."

It seems probable that this measure was intended to apply to American fishermen in their home ports.

Fishing vessels do not take out clearances: neither does it appear that they have either passport or manifest, papers usually carried by vessels in the foreign trade. It may well be a question then, whether this permit to touch and trade, without naming any special port of destination, could be expected to give a vessel commercial rights in foreign ports. When a vessel arrives near an American port, the first question asked of its master by the United States revenue officer is its destination and its port of departure, and the ship's papers are expected to show these. To prevent illicit trade, the revenue laws of all maritime nations are necessarily pretty stringent in these respects. If, therefore, American fishing vessels claim the right, under the convention of 1818, of trading

in Canadian ports, they should expect to comply with the revenue regulations imposed upon trading vessels. But fishermen do not wish to be hampered by these regulations. They do not know beforehand at what ports they may wish to touch, —that depends upon the whereabouts of the fish for which they are searching, as well as upon other contingencies.

According to Senator Edmunds' report of January 19, 1887, the only vessel in the fishing business which sailed with a clearance during the summer of 1886 was the *Druid*, McQuinn master, which cleared from Gloucester to Harbor De Bar, Magdalen Islands. Instead, however, of going to the Magdalens, she turned from her course and put in at Malpeque, Prince Edward Island, and tried to get a cargo of fish to bring back, and of course got into trouble with the revenue officers. The vessel was registered, and went down, not to fish, but to carry supplies to fishing vessels, and to bring back a cargo of fish; but finding the fishing fleet off Prince Edward Island, the master entirely ignored his clearance to the Magdalens.

The practice of American fishermen of buying bait and other supplies without complying with the Canadian customs laws is illustrated by the case of the *David J. Adams*, which was argued at Halifax in 1888. The *Adams* was seized on the 7th of May, 1886 in Digby Bay for buying bait and ice in British waters in contravention of the treaty of 1818.

The counsel for the owners of the *Adams* argued that American fishermen had a right to buy, in Canadian waters, bait and other supplies necessary for fishing, to be used in the deep-sea fisheries.

The Canadian counsel insisted upon the strict interpretation of the treaty, that American fishing vessels may enter their waters for purposes of shelter, repairing damages, the purchase of wood and obtaining of water, and "for no other purpose whatever." As the British courts do not administer treaties, but only the statutes that are passed to carry treaties into effect, the Canadian courts encountered a difficulty, from the fact that the Imperial act of 1819, to carry into effect the convention of 1818, imposed no penalty for buying bait or supplies; the only penalty was for "fishing or preparing to fish" within the prohibited waters. In order to make the purchase of bait or other fishing supplies an offense under the treaty, it

was therefore necessary to consider this act as a "preparing to fish" within the prohibited waters.

Two similar cases were decided in 1870 and 1871, the decisions being, however, in direct conflict with each other.

The first of these was the case of the *White Fawn*, an American fishing vessel, seized at Head Harbor, Campobello, for buying bait and ice in 1870. Judge Hazen, of St. John, who tried the case, said that the construction sought to be put upon the statutes by the Crown officers was that "a foreign vessel being in British waters and purchasing from a British subject any article which may be used in prosecuting the fisheries, without its being shown that such article is to be used in illegal fishing in British waters, is liable to forfeiture as preparing to fish in British waters."

Judge Hazen continues:—

"I cannot adopt such a construction. I think it is harsh and unreasonable, and not warranted by the words of the statutes. It would subject a foreign vessel which might be of great value, as in the present case, to forfeiture, with her cargo and outfits for purchasing (while she was pursuing her voyage in British waters, as she lawfully might do, within three miles of our coast) of a British subject any article however small in value (a card line or net, for instance) without its being shown that there was any intention of using such articles in illegal fishing in British waters before she reached the fishing grounds to which she might legally resort for fishing under the terms of the statutes.

"I construe the statutes simply thus: If a foreign vessel is found—1st, having taken fish; 2d, fishing, etc.; 3rd, preparing to fish, etc., in British waters."

The statutes, he says, were intended to prevent fishing in British waters.

This was precisely the ground taken by Mr. Bayard.

The other case, in 1871, was that of the *J. H. Nickerson*, an American fishing vessel seized in the North Bay of Ingonish, Cape Breton, for buying bait. Sir William Young, judge of the Vice-Admiralty court at Halifax, rendered the decision that the purchase of bait was "a preparing to fish" in the sense of the British statutes; the vessel was therefore condemned on that ground.

The cause of complaint on the part of American fishermen

in the summer of 1886 was not so much on account of not being permitted to buy bait and other supplies, as it was on account of the harsh and unreasonable manner in which the Canadian authorities carried out the regulations under the convention of 1818 and their own customs laws. A vessel, according to this interpretation, could enter a port to repair damages, but was not permitted to buy a rope or anything that might be wanted for such repairs; she could procure water, but if her water casks were out of repair, she was not allowed to buy new ones, or even a hoop with which to mend the old ones; she could enter a harbor for shelter, but if she put a man on shore or took one on board, she was subject to detention and fine: and in any case she was often so pestered and insulted by revenue officials that it were better to run the chances of shipwreck than to enter a harbor where it was easy to find an excuse for her detention. The actions of Captain Quigly and a few others had more to do with stirring up a feeling of indignation and resentment in the United States, than did any refusal of rights under the treaty. It was not the seizure of the *David J. Adams* and similar cases which was objected to so much as it was such acts as the detention of vessels on slight pretexts, and the hauling down the flag of an American vessel entered for innocent purposes; and the refusal to allow an American vessel to land the crew and effects of a wrecked Nova Scotian vessel whom she had rescued at great trouble and expense. Such acts as these revealed the animus of the Canadians, which would seem to have been to take advantage of every technicality of law or treaty, to annoy and provoke the American fishermen, with the probable motive of ultimately forcing the United States to make a new reciprocity treaty.

Another cause of complaint on the part of the United States was the nature of the Canadian laws, which authorized and regulated the seizure of transgressing fishing vessels. The captor was given a large interest (about one-half) in the vessel seized, and then he was so protected by restrictions placed upon the owner of the vessel seized, that there was little or no danger to the captor, even if the seizure were illegal. Moreover, "the burden of proving the illegality of the seizure shall be upon the owner or claimant." (Law of 1868, sections 6, 10, 15, 16.)

Again, the United States can only negotiate with the home government and hold it responsible in matters connected with the Canadian fisheries; whereas the Dominion Government since 1867 has really taken the matter into its own hands, and puts its own construction upon treaties, and, under the name of local regulations, may greatly modify the treaties. Except in the last resort, England seems to have abrogated her authority in Canada.[1]

Now, looking at the question from the Canadian standpoint, what is the nature of the grievance which the Canadians have against us? To put it briefly, it is that American fishermen wish to use Canadian ports and waters generally, as a base for their fishing operations in the Gulf of St. Lawrence and the neighboring seas; whilst the Canadians, fishing in the same waters, are practically shut out of the American market by the high duty laid on their fish in the United States. They affirm, too, that many American fishermen habitually fish within the prohibited three-mile limit, when the Dominion cruisers are not in their vicinity; and that they tend to destroy the fishery by throwing offal overboard on the fishing grounds. As to the complaint of American fishermen, that they are unduly molested when seeking shelter in Canadian harbors, the Canadian officials answer that, on the pretense of seeking shelter, American fishing vessels frequently approach the shore or harbors for the purpose of landing or taking on men.

Let us illustrate the above general complaint in the case of the mackerel fishery, which is mainly limited to the Gulf of St. Lawrence. If an American mackerel vessel goes to the Gulf in the beginning of the season, and can there obtain supplies and the privilege of transshipping her cargoes in Canadian ports, it is evidently a great advantage to her; for, otherwise, she would be obliged to sail home every time she had got a full fare or was out of provisions. Now, say the Canadians, you wish us to give you all the privileges in our ports that we ourselves possess, to aid you in taking mackerel, but when we go to your ports to sell mackerel, you demand of us a duty of $2.00 a barrel.

In the case of the cod fishery, there is not so much depend-

[1] The term Canada is used in these pages as a matter of convenience to include Newfoundland.

ence upon the British provinces, because these fish are taken mostly on the Banks; but even here bait could be obtained cheaper and better from the Canadians, if it were permitted to buy it. In this case too it might be advantageous to transship the fish.

Now if we wish to have those privileges, say the Canadians, we must give something in return, and of course the thing most desired is a free market for their fish. To this of all things the American fishermen most object. On their side, they say that they cannot compete with the Canadian fishermen on equal terms, for the reason that the cost of vessels, labor and of living is much less in the provinces than it is in the United States. They say further, according to the evidence taken in 1888 by Mr. Edmunds' committee, that the Canadians have nothing to give them which would be an equivalent for a free market to Canadian fish, not even the grant of the inshore fishery; they care nothing, they affirm, for the privileges of buying bait which is now only used for fishing for cod and halibut.

It remains to be seen whether American fishermen can profitably carry on the mackerel fishing under the present conditions,—that is, in the absence of those privileges and facilities which they possessed under the reciprocity treaties. It is quite evident that the Canadians, backed by the home government, will not recede from their interpretation of the convention of 1818 as to the distinction between trading and fishing vessels. And it may indeed be said in favor of this view that the general practice of nations is to regulate fisheries by treaties, in which fishing vessels are placed in a special class. Even the United States make, in their laws, certain distinctions between the two classes of vessels. On the other hand, it is said that Canadian fishing vessels are admitted freely into the ports of the United States.

In 1887, Congress authorized the President, by way of retaliation, to suspend so much of the 29th article of the treaty of 1871 as granted to Great Britain the privilege of the transit of merchandise through the territories of the United States without payment of duties. This authority was not exercised by the President.

The controversy of 1886 and 1887 led to negotiations for a

new fisheries treaty; and on the 15th of February, 1888, such a treaty was signed at Washington, but was subsequently rejected by the Senate.

The provisions of the treaty are as follows:

ARTICLE I.

The High Contracting Parties agree to appoint a mixed Commission to delimit, in the manner provided in this Treaty, the British waters, bays, creeks, and harbors of the coasts of Canada and of Newfoundland, as to which the United States, by Article I. of the Convention of October 20th, 1818, between the United States and Great Britain, renounced forever any liberty to take, dry, or cure fish.

ARTICLE II.

The Commission shall consist of two commissioners to be named by Her Britannic Majesty, and of two commissioners to be named by the President of the United States, without delay, after the exchange of ratifications of this Treaty.

The Commission shall meet and complete the delimitation as soon as possible thereafter.

In case of the death, absence, or incapacity of any commissioner, or in the event of any commissioner omitting or ceasing to act as such, the President of the United States or Her Britannic Majesty respectively shall forthwith name another person to act as commissioner instead of the commissioner originally named.

ARTICLE III.

The delimitation referred to in Article I. of this Treaty shall be marked upon British Admiralty charts by a series of lines regularly numbered and duly described. The charts so marked shall, on the termination of the work of the Commission, be signed by the commissioners in quadruplicate, one copy whereof shall be delivered to the Secretary of State of the United States, and three copies to Her Majesty's Government. The delimitation shall be made in the following manner, and shall be accepted by both the High Contracting Parties as applicable for all purposes under Article I. of the Convention of October 20th, 1818, between the United States and Great Britain.

The three marine miles mentioned in Article I. of the Conven-

ARTICLE V.

Nothing in this treaty shall be construed to include within the common waters any such interior portions of any bays, creeks, or harbors as cannot be reached from the sea without passing within the three marine miles mentioned in Article I. of the Convention of October 20th, 1818.

ARTICLE VI.

The commissioners shall from time to time report to each of the High Contracting Parties, such lines as they may have agreed upon, numbered, described, and marked as herein provided, with quadruplicate charts thereof ; which lines so reported shall forthwith from time to time be simultaneously proclaimed by the High Contracting parties, and be binding after two months from such proclamation.

ARTICLE VII.

Any disagreement of the commissioners shall forthwith be referred to an umpire selected by the Secretary of State of the United States and Her Britannic Majesty's Minister at Washington ; and his decision shall be final.

ARTICLE VIII.

Each of the High Contracting Parties shall pay its own commissioners and officers. All other expenses jointly incurred in connection with the performance of the work, including compensation to the umpire, shall be paid by the High Contracting Parties in equal moieties.

ARTICLE IX.

Nothing in this treaty shall interrupt or affect the free navigation of the Strait of Canso by fishing vessels of the United States.

ARTICLE X.

United States fishing vessels entering the bays or harbors referred to in Article I. of this Treaty shall conform to harbor reg

ulations common to them and to fishing vessels of Canada or of Newfoundland.

They need not report, enter, or clear, when putting into such bays or harbors for shelter or repairing damages, nor when putting into the same, outside the limits of established ports of entry, for the purpose of purchasing wood or of obtaining water; except that any such vessel remaining more than twenty-four hours, exclusive of Sundays and legal holidays, within any such port, or communicating with the shore therein, may be required to report, enter, or clear; and no vessel shall be excused hereby from giving due information to boarding officers.

They shall not be liable in any such bays or harbors for compulsory pilotage; nor, when therein for the purpose of shelter, of repairing damages, of purchasing wood, or of obtaining water, shall they be liable for harbor dues, tonnage dues, buoy dues, light dues, or other similar dues; but this enumeration shall not permit other charges inconsistent with the enjoyment of the liberties reserved or secured by the Convention of October 20th, 1818.

ARTICLE XI.

United States fishing vessels entering the ports, bays, and harbors of the Eastern and Northeastern coasts of Canada or of the coast of Newfoundland under stress of weather or other casualty may unload, reload, transship, or sell, subject to customs laws and regulations, all fish on board, when such unloading, transshipment, or sale is made necessary as incidental to repairs, and may replenish outfits, provisions, and supplies damaged or lost by disaster; and in case of death or sickness shall be allowed all needful facilities, including the shipping of crews.

Licenses to purchase in established ports of entry of the aforesaid coasts of Canada or of Newfoundland, for the homeward voyage, such provisions and supplies as are ordinarily sold to trading vessels, shall be granted to United States fishing vessels in such ports, promptly upon application and without charge; and such vessels having obtained licenses in the manner aforesaid, shall also be accorded upon all occasions such facilities for the purchase of casual or needful provisions and supplies as are ordinarily granted to the trading vessels; but such provisions or supplies shall not be obtained by barter, nor purchased for resale or traffic.

ARTICLE XII.

Fishing vessels of Canada and Newfoundland shall have on the Atlantic coast of the United States all the privileges reserved and secured by this treaty to United States fishing vessels in the aforesaid waters of Canada and Newfoundland.

ARTICLE XIII.

The Secretary of the Treasury of the United States shall make regulations providing for the conspicuous exhibition by every United States fishing vessel, of its official number on each bow ; and any such vessel, required by law to have an official number, and failing to comply with such regulations, shall not be entitled to the licenses provided for in this Treaty.

Such regulations shall be communicated to Her Majesty's Government previously to their taking effect.

ARTICLE XIV.

The penalties for unlawfully fishing in the waters, bays, creeks, and harbors referred to in Article I. of this treaty, may extend to forfeiture of the boat or vessel and appurtenances, and also of the supplies and cargo aboard when the offense was committed ; and for preparing in such waters to unlawfully fish therein, penalties shall be fixed by the court, not to exceed those for unlawfully fishing ; and for any other violation of the laws of Great Britain, Canada, or Newfoundland, relating to the right of fishery in such waters, bays, creeks, or harbors, penalties shall be fixed by the court, not exceeding in all three dollars for every ton of the boat or vessel concerned. The boat or vessel may be holden for such penalties and forfeitures.

The proceedings shall be summary and as inexpensive as practicable. The trial (except on appeal) shall be at the place of detention, unless the judge shall, on request of the defense, order it to be held at some other place adjudged by him more convenient. Security for costs shall not be required of the defense, except when bail is offered. Reasonable bail shall be accepted. There shall be proper appeals available to the defense only ; and the evidence at the trial may be used on appeal.

Judgments of forfeiture shall be reviewed by the Governor-General of Canada in Council, or the Governor in Council of Newfoundland, before the same are executed.

ARTICLE XV.

Whenever the United States shall remove the duty from fish-oil, whale-oil, seal-oil, and fish of all kinds (except fish preserved in oil), being the produce of fisheries carried on by the fishermen of Canada and Newfoundland, including Labrador, as well as from the usual and necessary casks, barrels, kegs, cans, and other usual and necessary coverings containing the products above mentioned, the like products, being the produce of fisheries carried on by the fishermen of the United States, as well as the usual and necessary coverings of the same, as above described, shall be admitted free of duty into the Dominion of Canada and Newfoundland.

And upon such removal of duties, and while the aforesaid articles are allowed to be brought into the United States by British subjects, without duty being reimposed thereon, the privilege of entering the ports, bays, and harbors of the aforesaid coasts of Canada and Newfoundland shall be accorded to United States fishing vessels by annual licenses, free of charge, for the following purposes, namely :—

1. The purchase of provisions, bait, ice, seines, lines, and all other supplies and outfits.

2. Transshipment of catch, for transport by any means of conveyance.

3. Shipping of crews.

Supplies shall not be obtained by barter, but bait may be so obtained.

The like privileges shall be continued or given to fishing vessels of Canada and of Newfoundland on the Atlantic coasts of the United States.

ARTICLE XVI.

This Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate, and by Her Britannic Majesty, having received the assent of the Parliament of Canada and of the Legislature of Newfoundland, and the ratifications shall be exchanged at Washington as soon as possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate, at Washington, this fifteenth day of Febru-

ary, in the year of our Lord one thousand eight hundred and eighty-eight.

(Signed)	T. F. BAYARD,	[SEAL]
"	WILLIAM L. PUTNAM,	[SEAL]
"	JAMES B. ANGELL,	[SEAL]
"	J. CHAMBERLAIN,	[SEAL]
"	L. S. SACKVILLE WEST,	[SEAL]
"	CHARLES TUPPER.	[SEAL]

MODUS VIVENDI.

The British negotiators offered to make the following temporary arrangement or *modus vivendi*, pending the ratification of the treaty:—

"1. For a period not exceeding two years from the present date, the privilege of entering the bays and harbors of the Atlantic coasts of Canada and Newfoundland shall be granted to the United States fishing vessels by annual licenses at a fee of $1\frac{1}{2}$ per ton—for the following purposes:

"The purchase of bait, ice, seines, lines, and all other supplies and outfits.

"Transshipment of catch and shipping of crews.

"2. If, during the continuance of this arrangement, the United States should remove the duties on fish, fish-oil, whale and seal-oil (and their coverings, packages, etc.), the said licenses shall be issued free of charge.

"3. United States fishing vessels entering the bays and harbors of the Atlantic coasts of Canada or of Newfoundland for any of the four purposes mentioned in Article I. of the convention of October 20, 1818, and not remaining therein more than twenty-four hours, shall not be required to enter or clear at the custom house, providing that they do not communicate with the shore.

"4. Forfeiture to be exacted only for the offenses of fishing or preparing to fish in territorial waters.

"5. This arrangement to take effect as soon as the necessary measures can be completed by the colonial authorities.

"WASHINGTON, February 15, 1888."

The American commissioners accepted this agreement, and it has been since that time, by renewal, the fisheries arrangement between the two countries.

In some respects the rejected treaty of 1888 was not so favorable to United States fishermen as the earlier reciprocity treaties, which permitted them to take fish in all the bays and marginal waters of the British provinces. Even if the duty on fish in the United States be removed, our fishermen would be accorded commercial privileges only. Yet if a general recipocity treaty is impossible, some such arrangement as that treaty offered would doubtless be better than the uncertain condition of the fisheries under the treaty of 1818. The real difficulty in the way of a settlement of the fisheries controversy on broad lines is the tariff system of the United States; until that is modified there can be little hope of a satisfactory arrangement.

Bounties and Duties in Respect of the Fisheries.

Bounties.—By an act of Congress in 1789 a bounty was allowed of five cents per quintal on dried, and the same per barrel on pickled fish exported from the United States; and a duty was imposed of fifty cents per quintal and of seventy-five cents per barrel on foreign fish imported.

In 1792 the bounty on dried and pickled fish exported was abolished, and in lieu thereof a specific sum was granted to vessels employed in the cod-fishery (but only in case the fish were to be dried or dry-cured), graduated according to the size of the vessels. Boats between five and twenty tons burden were entitled to receive one dollar per ton annually; those between twenty and thirty tons, fifty cents additional; and to those more than thirty tons, the allowance was fixed at two dollars and fifty cents per ton; but no vessel could receive more than one hundred and seventy dollars in one season. By a subsequent act the same year, these rates were increased one-fifth, to commence in January, 1793, to continue seven years, and thence to the end of the next session of Congress.

By the act of July 29, 1813: "There shall be paid on the last day of December, annually, to the owner of every vessel or his agent, by the collector of the district where such vessel may belong, that shall be qualified agreeably to law for carrying on the bank and other cod-fisheries, and that shall actually have been employed therein at sea for the term of four months, at the least, of the fishing season next preceding, which season is accounted

to be from the last day of February to the last day of November in every year, for each and every ton of such vessel's burthen according to her admeasurement as licensed or enrolled, if of twenty tons and not exceeding thirty tons, two dollars and forty cents; and if above thirty tons four dollars; of which allowance aforesaid three-eighth parts shall accrue and belong to the owner of such fishing vessel, and the other five-eighths thereof shall be divided by him * * * to and among the several fishermen who shall have been employed in such vessel during the season aforesaid, * * * in such proportions as the fish they shall respectively have taken may bear to the whole quantity of fish taken on board such vessel during such season: *Provided*, that the allowance aforesaid on any one vessel for one season shall not exceed two hundred and seventy-two dollars."

On boats of a tonnage of over five and less than twenty tons, the allowance was one dollar and sixty cents, to be accounted a part of the proceeds of the fares and divided accordingly.

By act of March 1, 1817, to receive bounty under the law, it must be shown that the officers and three-fourths of the crew of the vessel are American citizens.

The act of March 3, 1819, increased the bounties to some extent. Vessels of more than five and not exceeding thirty tons were to receive three dollars and fifty cents per ton, above thirty tons, four dollars; and the maximum limit was raised to three hundred and sixty dollars.

The act of March 3, 1865, extended the provisions of the act of 1813 in respect of bounties "to the master or skipper and seamen of vessels of the burden of twenty tons or upwards, qualified according to law for carrying on the mackerel fisheries."

Licenses to vessels engaged in the mackerel fishery were first granted by the act of May 24, 1828; and it was not till 1865 that such vessels were given the benefit of the bounty. But this privilege was of short duration, for the next year (July 28, 1866) Congress enacted:

"That all laws and parts allowing fishing bounties to vessels hereafter licensed to engage in the fisheries be and the same are hereby repealed."

Duties.—The tariff of 1816 imposed a duty of one dollar per quintal on foreign dried or smoked fish imported into the United States, two dollars per barrel on salmon, one dollar and fifty cents per barrel on mackerel, and one dollar per barrel on all other kinds of pickled fish. The tariffs of 1824, 1828, and 1832

did not change these duties. They were of course subject to the Clay compromise tariff of 1833; and by the Walker tariff of 1846, the specific duties on fish were repealed, and a uniform twenty per cent. ad valorem rate substituted.

In the tariff of March 2, 1861, a specific duty is reimposed as follows:

"On mackerel, two dollars per barrel; on herrings, pickled or salted, one dollar per barrel; on pickled salmon, three dollars per barrel; on all other fish pickled in barrels, one dollar and fifty cents per barrel; on all other foreign caught fish imported otherwise than in barrels or half-barrels, or whether fresh, smoked or dried, salted or pickled, not otherwise provided for, fifty cents per hundred pounds."

In 1874 (or about that time) "fish, fresh, for immediate consumption, and fish for bait" were put on the free list.

Under the McKinley Act of October 6, 1890, "fish, pickled, in barrels or half-barrels, and mackerel or salmon, pickled or salted, one cent per pound.

"Fish, smoked, dried, salted, pickled, frozen, packed in ice, or otherwise prepared for preservation; and fresh fish, not specially provided for in this act, three-fourths of one cent per pound.

"Herrings, pickled or salted, one-half of one cent per pound; herrings, fresh, one-fourth of one cent per pound."

During the periods of the reciprocity treaties of 1854 and 1871 the duties were not in force.[1]

[1] *References.*— The treaties with England on the subject of the fisheries may be found in this volume in their chronological order.

Charles B. Elliott: "The United States and the Northeastern Fisheries," 1887, p. 151, being a history of the fisheries question.

Charles Isham: "The Fishery Question, its Origin, History and Present Situation," 1887, p. 89.

Lorenzo Sabine: "Report on the Principal Fisheries of the American Seas," 1853, p. 317. Submitted by Thomas Corwin, Secretary of the Treasury, as a part of his annual report on the finances.

John Quincy Adams: "The Fisheries and the Mississippi," 1823, p. 223. Documents, with a discussion relating to transactions at the negotiation of Ghent.

Theodore Lyman: "The Diplomacy of the United States," 1828, Vol. II., pp. 86–101.

Francis Wharton: "A Digest of International Law," Vol. III., §§ 299–309.

Eugene Schuyler: "American Diplomacy," 1886, pp. 404–420.

THE BEHRING SEA ARBITRATION.

The controversy which ended in the arbitration of 1893 had its origin in the disputed claims in respect of the northwestern coast of America.

In 1790, Spain claimed all the northwestern coast of America as far north as Prince William's Sound in latitude 61°, upon the ground of prior discovery and long possession. England disputed this claim, upon the principle that the earth is the common inheritance of mankind, of which each individual and each nation has a right to appropriate a share, by occupation and cultivation. This dispute was terminated by a convention between the two powers, known as the Nookta Sound Convention, stipulating that their respective subjects should not be disturbed in their navigation and fisheries in the Pacific Ocean or the South Seas, or in landing on the coasts of those seas, not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there, subject to the condition that British subjects should not navigate or fish within the space of ten marine leagues from any part of the coasts already occupied by Spain; and that where the subjects of either of the two powers should have made settlements since the month of April, 1789, or should thereafter make any, the subjects of the other should have free access, and should carry on their trade without any disturbance or molestation.—(*Dana's Edition of Wheaton's International Law*, p. 242.)

In 1799, the Emperor Paul of Russia granted by charter to the Russian American Company the exclusive right of hunting, trade, and the discovery of new land on the northwestern coast of America, from Behring's Strait to the fifty-fifth degree of north latitude, with permission to extend their dis-

The Records of the Halifax Commission contain a presentation of the arguments on the whole question of the fisheries.

Public Documents: In Elliott's history of the Fisheries may be found a list of public documents relating to the fisheries; and also a list of other authorities.

coveries to the south and to form establishments the provided they did not encroach upon the territory occupied l other powers.—(*Foreign Relations*, 1890, p. 456.)

On the 4th of September, 1821, the Emperor Alexander of Russia issued the following ukase:—

"SECTION I.—The transaction of commerce, and the pursuit whaling and fishing, or any other industry on the islands, in t harbors and inlets, and, in general, all along the northweste coast of America from Behring Strait to the fifty-first parallel northern latitude, and likewise on the Aleutian Islands and alo the eastern coast of Siberia, and on the Kurile Islands ; that i from Behring Strait to the southern promontory of the Island Urup, viz., as far south as latitude forty-five degrees and fif minutes north, are exclusively reserved to subjects of the Russi Empire.

"SECTION II.—Accordingly, no foreign vessel shall be allowe either to put to shore at any of the coasts and islands under Ru sian dominion as specified in the preceding section, or even to a proach the same to within a distance of less than one hundre Italian miles. Any vessel contravening this provision shall b subject to confiscation with her whole cargo."—(*Foreign Rel tions*, 1890, p. 439.)

Both the United States and England, having undefine claims to territory on the northwest coast of America, pr tested against this extension of Russian jurisdiction.

In a communication to Poletica, the Russian Minister a Washington, February 25, 1822, Mr J. Q. Adams, Secretary c State, said:—

"I am directed by the President of the United States to inform you that he has seen with surprise, in this edict, the assertion o a territorial claim on the part of Russia, extending to the fifty first degree of north latitude on this continent, and a regulatio interdicting to all commercial vessels other than Russian, upo the penalty of seizure and confiscation, the approach upon th high seas within one hundred Italian miles of the shores to whic that claim is made to apply. * * * It was expected before any ac which should define the boundaries between the United States an Russia on this continent, that the same would have been arranged by treaty between the parties. To exclude the vessels of ou

citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise."—(*American State Papers, Foreign Relations*, IV., 871.)

On the 28th of February, 1822, Poletica replied to Adams :—

"I shall be more succinct, sir, in the exposition of the motives which determined the Imperial Government to prohibit foreign vessels from approaching the northwest coast of America belonging to Russia within the distance of at least one hundred Italian miles. This measure, however severe it may at first view appear, is, after all, but a measure of prevention. It is exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade very prejudicial to the rights reserved entirely to the Russian-American Company, take upon them besides to furnish arms and amumunition to the natives in the Russian possessions in America, exciting them likewise in every manner to resistance and revolt against the authorities there established. * * * Pacific means not having brought any alleviation to the just grievances of the Russian-American Company against foreign navigators in the waters which environ their establishments on the northwest coast of America, the Imperial Government saw itself under the necessity of having recourse to the means of coercion, and of measuring the rigor according to the inveterate character of the evil to which it is wished to put a stop. * * *

"I ought, in the last place, to request you to consider, sir, that the Russian possessions in the Pacific Ocean extend, on the northwest coast of America, from Behring Strait to the fifty-first degree of north latitude, and on the opposite side of Asia, and the islands adjacent, from the same strait to the forty-fifth degree. The extent of sea, of which these possessions form the limits, comprehends all the conditions which are ordinarily attached to *shut seas* (*mers fermees*), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities."—(*American State Papers, Foreign Relations*, IV., 862.)

In reply Adams said on the 30th of March, 1822 :—

"This pretension is to be considered not only with reference to

the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within one hundred Italian miles of the coasts. From the period of the existence of the United States as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.

"With regard to the suggestion that the Russian Government might have exercised the right of sovereignty over the Pacific Ocean as a close sea, because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than ninety degrees of longitude, or four thousand miles.

"As little can the United States accede to the justice of the reason assigned for the prohibition above mentioned. The right of the citizens of the United States to hold commerce with the aboriginal natives of the northwest coast of America, without the territorial jurisdiction of other nations, even in arms and munitions of war, is as clear and indisputable as that of navigating the seas."—(*American State Papers, Foreign Relations*, IV., 863.)

Under date of November 1, 1822, Adams writes in Journal:

"I received a dispatch from H. Middleton, our minister at St. Petersburg, dated 20th August, relating entirely to the Northwest Coast controversy. The Baron de Tuyl is coming out as minister from Russia, charged with a proposal for negotiating on the subject. Speransky, now Governor-General of Siberia, told Middleton that they had at first thought of declaring the Northern Pacific Ocean a "*mare clausum*," but afterward took the one hundred Italian miles from the thirty leagues in the Treaty of Utrecht, which is an exclusion only from a fishery, and not from navigation."

On July 17, 1823, Adams wrote:

"Baron Tuyl came, * * * I told him especially that we should contest the right of Russia to *any* territorial establishment on this continent, and that we should assume distinctly the principle that the American continents are no longer subjects for *any* new European colonial establishments. We had a conversation of an hour or more, at the close of which he said that although there would be difficulties in the negotiation, he did not foresee that they would be insurmountable."—(*Memoirs*, VI., 163.)

In writing to Middleton, July 22, 1823, Adams said :—

"The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain *islands* north of the fifty-fifth degree of latitude, and have no existence on the continent of America."—(*American State Papers, Foreign Relations*, V., 436.)

The protests of the English government were quite as vigorous as those of the United States. On the 28th of November, 1822, the Duke of Wellington expressed the English objections in the following letter :—

"M. LE COMTE,—Having considered the paper which your Excellency gave me last night, on the part of his Excellency Count Nesselrode, on the subject of our discussions on the Russian Ukase, I must inform you that I cannot consent, on the part of my government, to found on that paper the negotiation for the settlement of the question which has arisen between the two Governments on this subject.

"We object to the ukase on two grounds : (1) That His Imperial Majesty assumes thereby an exclusive sovereignty in North America, of which we are not prepared to acknowledge the existence or the extent ; upon this point, however, the memoir of Count Nesselrode does afford the means of negotiation ; and my government will be ready to discuss it, either in London or St. Petersburg, whenever the state of the discussions on the other question arising out of the ukase will allow of the discussion.

"The second ground on which we object to the ukase is that His Imperial Majesty thereby excludes from a certain considerable extent of the open sea vessels of other nations. We contend that the assumption of this power is contrary to the law of nations ; and we cannot found a negotiation upon a paper in which it is again broadly asserted. We contend that no power whatever can exclude another from the use of the open sea ; a power can exclude itself from the navigation of a certain coast, sea, etc., by its own act or engagement, but it cannot by right be excluded by another. This we consider as the law of nations ; and we cannot

negotiate upon a paper in which a right is asserted inconsistent with this principle.

"I think, therefore, that the best mode of proceeding would be that you should state your readiness to negotiate upon the whole subject, without restating the objectionable principle of the ukase which we cannot admit."

Russia finally withdrew the exaggerated claims of the Ukase of 1821, and entered into treaties with the United States and England, by which her territorial possessions on the northwest coast of America were limited on the south by the parallel of fifty-four degrees and forty minutes; and the freedom of the Pacific Ocean was conceded. The treaty with the United States of April 17, 1824, is given in full on page 132 of this volume.

The treaty with England was signed the 28th of February, 1825, and was similar to that with the United States, with the exception of the stipulations in respect of boundaries between British America and Alaska.

When the period of ten years established by the 4th article of the treaty with the United States had expired, the Russian government refused to renew it. American vessels were consequently prohibited from trading on the unoccupied parts of the coast, north of the parallel of fifty-four degrees and forty minutes. The American government protested against this prohibition, but the government of Russia adhered to its position; the other articles of the treaty, however, in respect of the Pacific Ocean or South Sea, still remained in force.

The controversy between the United States and England in respect of the Oregon boundary was settled by treaty in 1846, making the 49th parallel the dividing line.

On the 30th of March, 1867, Russia ceded by treaty all her possessions in North America to the United States.[1] The first article of the treaty defines the boundary of the cession; and among other descriptions of boundary, declares that "*the western limit within which the territories conveyed are contained*, passes through, etc. * * * so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian." The question afterwards arose whether this description was

[1] For the treaty of cession see page 135, *supra*.

intended to included all the waters of Behring Sea east of the meridian mentioned, or whether it referred only to the lands and islands within those limits and to the ordinary territorial waters connected therewith.

By act of Congress, July 27, 1868:

"The laws of the United States relating to customs, commerce and navigation, are extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the thirtieth day of March A. D. one thousand eight hundred and sixty-seven, so far as the same may be applicable thereto."—(*Revised Statutes, section* 1954.)

"No person shall kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal within the limits of Alaska Territory, or in the waters thereof. * * *"—(*Ib., section* 1956.)

On July 1, 1870, Congress enacted:—

"That it shall be unlawful to kill any fur-seal upon the islands of St. Paul and St. George, or in the waters adjacent thereto, except during the months of June, July, September, and October in each year; and it shall be unlawful to kill such seals at any time by the use of fire-arms, or use of other means tending to drive the seals away from the said islands: *Provided*, That the natives of said islands shall have the privilege of killing such young seals as may be necessary for their own food and clothing during other months. * * * The Secretary of the Treasury shall lease, for the rental mentioned in Section six of this act, to proper and responsible parties, to the best advantage of the United States, having due regard to the interests of the Government, the native inhabitants, the parties heretofore engaged in trade, and the protection to the seal fisheries, for a term of twenty years from the first day of May, eighteen hundred and seventy, the right to engage in the business of taking fur-seals on the islands of St. Paul and St. George."—(*United States Statutes at Large*, XVI., 180, 181.)

In accordance with this act the Secretary of the Treasury leased the said privilege to the Alaska Commercial Company.

The view of the Treasury Department at this time in respect of the jurisdiction of the United States over Behring Sea is shown by the following letter of Secretary Boutwell to the collector at San Francisco, dated April 19, 1872:—

that certain parties at your port contemplate the fitting out of expeditions to kill seals in these waters. You are requested to give due publicity to such letters, in order that such parties may be informed of the construction placed by this Department upon the provision of law referred to."

In August, 1886, three British vessels the *Onward*, *Carolena* and *Thornton*, were seized in Behring Sea, by the United States cruiser *Corwin* for taking seals in that sea, the seizures being made from forty-five to one hundred and fifteen miles from land.

In the case of the *Onward*, Judge Dawson of the District Court of Alaska, delivered the following charge to the jury October 4, 1886:—

"All the waters within the boundary set forth in this treaty to the western end of the Aleutian Archipelago and the chain of islands are to be considered as comprised within the waters of Alaska, and all the penalties prescribed by law against the killing of fur-bearing animals must therefore attach against any violation of law within the limits heretofore described.

"If, therefore, the jury believe from the evidence that the defendants by themselves or in conjunction with others did, on or about the time charged in the information, kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal or animals, on the shores of Alaska or in the Behring Sea, east of the 193d degree of west longitude, the jury should find the defendants guilty."—(Stanton, *The Behring Sea Controversy*, 7.)

The British government entered a formal protest against these seizures; and on the 26th of January, 1887, Attorney General Garland sent the following despatch to Judge Dawson:—

"I am directed by the President to instruct you to discontinue any further proceeding in the matter of the seizure of the British vessels *Carolena*, *Onward*, and *Thornton*, and discharge all vessels now held under such seizure and release all persons that may be under arrest in connection therewith."—(*Foreign Relations*, 1888, p. 1801.)

This order would seem to have been delayed, or not acted on, and during the summer of 1887, the seizure of Canadian

vessels continued. The United States revenue cutter *Richard Rush* captured the schooners *W. P. Sayward*, *Dolphin*, *Grace*, *Anna Beck*, and *Alfred Adams*, all far beyond the three-mile zone. By order of the Treasury Department, no captures were made during the summer of 1888.

On the 19th of August, 1887, Mr. Bayard proposed an international regulation of the fur-seal fisheries, sending communications to that effect to the governments of Great Britain, France, Germany, Russia, Japan, and Norway and Sweden.

While stopping the seizures and proposing international agreement, the government of the United States was careful not to formally renounce its right of jurisdiction over Behring Sea. In the circular of August 19, Mr. Bayard, said:—

"Without raising any question as to the exceptional measures which the peculiar character of the property in question might justify this Government in taking, without reference to any exceptional marine jurisdiction that might properly be claimed for that end, it is deemed advisable—and I am instructed by the President so to inform you—to attain the desired ends by international co-operation."

Of the States to whom this proposal was submitted, Germany made no answer; the others sent favorable replies. But further proceedings for the holding of an international conference were suspended, June, 1888, on account of objections made by the government of Canada, without whose assent Lord Salisbury would not go forward.

On the 27th of February, 1889, a bill for the regulation of the salmon fisheries in Alaska passed the Senate, and on the next day was amended in the House by the addition of the following clause:—

"§ 3. That section 1956 of the Revised Statutes of the United States was intended to include and apply, and is hereby declared to apply, to all the waters of Behring Sea in Alaska embraced within the boundary lines mentioned and described in the treaty with Russia, dated March 30, 1867, by which the Territory of Alaska was ceded to the United States. * * *"

The Senate disagreed to this amendment; and in con-

ference committee, it was changed to the form in which it appears in the act of March 2, 1889:—

"That section 1956 of the Revised Statutes of the United States is hereby declared to include and apply, to all the Dominion of the United States in the waters of Behring Sea."

This act left the question of dominion as unsettled as it was before. President Harrison, on March 22, 1889, issued a proclamation in conformity with the act, and during the summer of that year the revenue cutter *Rush* renewed the practice of seizing Canadian sealing vessels.

It was evident that up to this time, our State Department realized the inconsistency of the position of treating Behring Sea as a *mare clausum*, in face of the unbroken policy of the government since its foundation, in insisting upon the freedom of the seas. And it was not surprising, therefore, that other grounds for protecting the seals were sought for.

MR. BLAINE TO SIR JULIAN PAUNCEFOTE.

"WASHINGTON, *January* 22, 1890.

'SIR: Several weeks have elapsed since I had the honor to receive through the hands of Mr. Ewardes copies of two dispatches from Lord Salisbury complaining of the course of the United States revenue cutter *Rush* in intercepting Canadian vessels sailing under the British flag and engaged in taking fur-seals in the waters of the Behring Sea.

"Subjects which could not be postponed have engaged the attention of this Department and have rendered it impossible to give a formal answer to Lord Salisbury until the present time.

"In the opinion of the President, the Canadian vessels arrested and detained in the Behring Sea were engaged in a pursuit that was in itself *contra bonos mores*, a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States. To establish this ground it is not necessary to argue the question of the extent and nature of the sovereignty of this Government over the waters of the Behring Sea; it is not necessary to explain, certainly not to define, the powers and privileges ceded by His Imperial Majesty the Emperor of Russia in the treaty by which the Alaskan territory was transferred to the United states. The weighty consider-

ations growing out of the acquisition of that territory, with all the rights on land and sea especially connected therewith, may be safely left out of view while the grounds are set forth upon which this Government rests its justification for the action complained of by Her Majesty's Government.

"It cannot be unknown to Her Majesty's Government that one of the most valuable sources of revenue from the Alaskan possessions is the fur-seal fisheries of the Behring Sea. Those fisheries had been exclusively controlled by the Government of Russia, without interference or without question, from their original discovery until the cession of Alaska to the United States in 1867. From 1867 to 1886 the possession in which Russia had been undisturbed was enjoyed by this Government also. There was no interruption and no intrusion from any source. Vessels from other nations passing from time to time through Behring Sea to the Arctic Ocean in pursuit of whales had always abstained from taking part in the capture of seals.

"This uniform avoidance of all attempts to take fur-seal in those waters had been a constant recognition of the right held and exercised first by Russia and subsequently by this Government. It has also been the recognition of a fact now held beyond denial or doubt that the taking of seals in the open sea rapidly leads to their extinction. This is not only the well-known opinion of experts, both British and American, based upon prolonged observation and investigation, but the fact had also been demonstrated in a wide sense by the well-nigh total destruction of all seal fisheries except the one in the Behring Sea, which the Government of the United States is now striving to preserve, not altogether for the use of the American people but for the use of the world at large.

"The killing of seals in the open sea involves the destruction of the female in common with the male. The slaughter of the female seal is reckoned as an immediate loss of three seals, besides the future loss of the whole number which the bearing seal may produce in the successive years of life. The destruction which results from killing seals in the open sea proceeds, therefore, by a ratio which constantly and rapidly increases, and insures the total extermination of the species within a very brief period. It has thus become known that the only proper time for the slaughter of seals is at the season when they betake themselves to the land, because the land is the only place where the necessary discrimination can be made as to the age and sex of the seal. It

would seem, then, by fair reasoning, that nations not possessing the territory upon which seals can increase their numbers by natural growth, and thus afford an annual supply of skins for the use of mankind, should refrain from the slaughter in open sea where the destruction of the species is sure and swift.

"After the acquisition of Alaska the Government of the United States, through competent agents working under the direction of the best experts, gave careful attention to the improvement of the seal fisheries. Proceeding by a close obedience to the laws of nature, and rigidly limiting the number to be annually slaughtered, the Government succeeded in increasing the total number of seals and adding correspondingly and largely to the value of the fisheries. In the course of a few years of intelligent and interesting experiment the number that could be safely slaughtered was fixed at 100,000 annually. The company to which the administration of the fisheries was intrusted by a lease from this Government has paid a rental of $50,000 per annum, and in addition thereto $2.62½ per skin for the total number taken. The skins were regularly transported to London to be dressed and prepared for the markets of the world, and the business had grown so large that the earnings of English laborers, since Alaska was transferred to the United States, amount in the aggregate to more than twelve millions of dollars.

"The entire business was then conducted peacefully, lawfully, and profitably—profitably to the United States, for the rental was yielding a moderate interest on the large sum which this Government had paid for Alaska, including the rights now at issue; profitably to the Alaskan Company, which, under governmental direction and restriction, had given unwearied pains to the care and development of the fisheries; profitably to the Aleuts, who were receiving a fair pecuniary reward for their labors, and were elevated from semi-savagery to civilization and to the enjoyment of schools and churches provided for their benefit by the Government of the United States; and, last of all, profitably to a large body of English laborers who had constant employment and received good wages.

"This, in brief, was the condition of the Alaska fur-seal fisheries down to the year 1886. The precedents, customs, and rights had been established and enjoyed, either by Russia or the United States, for nearly a century. The two nations were the only powers that owned a foot of land on the continents that bordered, or on the islands included within, the Behring waters where the

seals resort to breed. Into this peaceful and secluded field of labor, whose benefits were so equitably shared by the native Aleuts of the Pribylov Islands, by the United States, and by England, certain Canadian vessels in 1886 asserted their right to enter, and by their ruthless course to destroy the fisheries and with them to destroy also the resulting industries which are so valuable. The Government of the United States at once proceeded to check this movement, which, unchecked, was sure to do great and irreparable harm.

"It was cause of unfeigned surprise to the United States that Her Majesty's Government should immediately interfere to defend and encourage (surely to encourage by defending) the course of the Canadians in disturbing an industry which had been carefully developed for more than ninety years under the flags of Russia and the United States—developed in such manner as not to interfere with the public rights or the private industries of any other people or any other person.

"Whence did the ships of Canada derive the right to do in 1886 that which they had refrained from doing for more than ninety years? Upon what grounds did Her Majesty's Government defend in the year 1886 a course of conduct in the Behring Sea which she had carefully avoided ever since the discovery of that sea? By what reasoning did Her Majesty's Government conclude that an act may be committed with impunity against the rights of the United States which had never been attempted against the same rights when held by the Russian Empire?

"So great has been the injury to the fisheries from the irregular and destructive slaughter of seals in the open waters of the Behring Sea by Canadian vessels, that whereas the Government had allowed one hundred thousand to be taken annually for a series of years, it is now compelled to reduce the number to sixty thousand. If four years of this violation of natural law and neighbor's rights has reduced the annual slaughter of seal by 40 per cent., it is easy to see how short a period will be required to work the total destruction of the fisheries.

"The ground upon which Her Majesty's Government justifies, or at least defends the course of the Canadian vessels, rests upon the fact that they are committing their acts of destruction on the high seas, viz., more than 3 marine miles from the shore-line. It is doubtful whether Her Majesty's Government would abide by this rule if the attempt were made to interfere with the pearl fisheries of Ceylon, which extend more than 20 miles from the

shore-line and have been enjoyed by England without molestation ever since their acquisition. So well recognized is the British ownership of those fisheries, regardless of the limit of the three-mile line, that Her Majesty's Government feels authorized to sell the pearl-fishing right from year to year to the highest bidder. Nor is it credible that modes of fishing on the Grand Banks, altogether practicable but highly destructive, would be justified or even permitted by Great Britain on the plea that the vicious acts were committed more than 3 miles from shore. * * *

"In the judgment of this Government the law of the sea is not lawlessness. Nor can the law of the sea and the liberty which it confers and which it protects, be perverted to justify acts which are immoral in themselves, which inevitably tend to results against the interests and against the welfare of mankind. One step beyond that which Her Majesty's Government has taken in this contention, and piracy finds its justification. The President does not conceive it possible that Her Majesty's Government could in fact be less indifferent to these evil results than is the Government of the United States. But he hopes that Her Majesty's Government will, after this frank expression of views, more readily comprehend the position of the Government of the United States touching this serious question. This Government has been ready to concede much in order to adjust all differences of view, and has, in the judgment of the President, already proposed a solution not only equitable but generous. Thus far Her Majesty's Government has declined to accept the proposal of the United States. The President now awaits with deep interest, not unmixed with solicitude, any proposition for reasonable adjustment which Her Majesty's Government may submit. The forcible resistance to which this Government is constrained in the Behring Sea is, in the President's judgment, demanded not only by the necessity of defending the traditional and long-established rights of the United States, but also the rights of good government and of good morals the world over.

"In this contention the Government of the United States has no occasion and no desire to withdraw or modify the positions which it has at any time maintained against the claims of the Imperial Government of Russia. The United States will not withhold from any nation the privileges which it demanded for itself when Alaska was part of the Russian Empire. Nor is the Government of the United States disposed to exercise in those possessions any less power or authority than it was willing to concede to

the Imperial Government of Russia, when its sovereignty extended over them. The President is persuaded that all friendly nations will concede to the United States the same rights and privileges on the lands and in the waters of Alaska which the same friendly nations always conceded to the Empire of Russia.

" I have, etc.,

" JAMES G. BLAINE."

THE MARQUIS OF SALISBURY TO SIR JULIAN PAUNCEFOTE.

" FOREIGN OFFICE, *May* 22, 1890.

" SIR : I received in due course your dispatch No. 9, of the 23d January, inclosing copy of Mr. Blaine's note of the 22d of that month, in answer to the protest made on behalf of Her Majesty's Government on the 12th October last, against the seizure of Canadian vessels by the United States revenue-cutter *Rush* in Behring Sea.

" The importance of the subject necessitated a reference to the Government of Canada, whose reply has only recently reached Her Majesty's Government. The negotiations which have taken place between Mr. Blaine and yourself afford strong reason to hope that the difficulties attending this question are in a fair way towards an adjustment which will be satisfactory to both Governments. I think it right, however, to place on record, as briefly as possible, the views of Her Majesty's Government on the principal arguments brought forward on behalf of the United States.

" Mr. Blaine's note defends the acts complained of by Her Majesty's Government on the following grounds :

" 1. That 'the Canadian vessels arrested and detained in the Behring Sea were engaged in a pursuit that is in itself *contra bonos mores*—a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States.'

" 2. That the fisheries had been in the undisturbed possession and under the exclusive control of Russia from their discovery until the cession of Alaska to the United States in 1867, and that from this date onwards until 1886 they had also remained in the undisturbed possession of the United States Government.

" 3. That it is a fact now held beyond denial or doubt that the taking of seals in the open sea rapidly leads to the extinction of the species, and that therefore nations not possessing the territory

upon which seals can increase their numbers by natural growth should refrain from the slaughter of them in the open sea.

"Mr. Blaine further argues that the law of the sea and the liberty which it confers do not justify acts which are immoral in themselves, and which inevitably tend to results against the interests and against the welfare of mankind; and he proceeds to justify the forcible resistance of the United States Government by the necessity of defending not only their own traditional and long established rights, but also the rights of good morals and of good government the world over.

"He declares that while the United States will not withhold from any nation the privileges which they demanded for themselves, when Alaska was part of the Russian Empire, they are not disposed to exercise in the possessions acquired from Russia any less power or authority than they were willing to concede to the imperial government of Russia when its sovereignty extended over them. He claims from friendly nations a recognition of the same rights and privileges on the lands and in the waters of Alaska which the same friendly nations always conceded to the Empire of Russia.

"With regard to the first of these arguments, namely, that the seizure of the Canadian vessels in the Behring Sea was justified by the fact that they were 'engaged in a pursuit that is in itself *contra bonos mores*—a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States,' it is obvious that two questions are involved: first, whether the pursuit and killing of fur-seals in certain parts of the open sea is, from the point of view of international morality, an offense *contra bonos mores;* and secondly whether if such be the case, this fact justifies the seizure on the high seas and subsequent confiscation in time of peace of the private vessels of a friendly nation.

"It is an axiom of international maritime law that such action is only admissible in the case of piracy or in pursuance of special international agreement. This principle has been universally admitted by jurists, and was very distinctly laid down by President Tyler in his special message to Congress, dated the 27th February, 1843, when, after acknowledging the right to detain and search a vessel on suspicion of piracy, he goes on to say: 'With this single exception, no nation has, in time of peace, any authority to detain the ships of another upon the high seas, on any pretext whatever, outside the territorial jurisdiction.'

"Now, the pursuit of seals in the open sea, under whatever circumstances, has never hitherto been considered as piracy by any civilized state. Nor, even if the United States had gone so far as to make the killing of fur-seals piracy by their municipal law, would this have justified them in punishing offenses against such law committed by any person other than their own citizens outside the territorial jurisdiction of the United States.

"In the case of the slave trade, a practice which the civilized world has agreed to look upon with abhorrence, the right of arresting the vessels of another country is exercised only by special international agreement, and no one Government has been allowed that general control of morals in this respect which Mr. Blaine claims on behalf of the United States in regard to seal-hunting.

"But her Majesty's Government must question whether this pursuit can of itself be regarded as *contra bonos mores*, unless and until, for special reasons, it has been agreed by international arrangement to forbid it. Fur-seals are indisputably animals *ferœ naturæ*, and these have universally been regarded by jurists as *res nullius* until they are caught; no person, therefore, can have property in them until he has actually reduced them into possession by capture.

"It requires something more than a mere declaration that the Government or citizens of the United States, or even other countries interested in the seal trade, are losers by a certain course of proceeding, to render that course an immoral one.

"Her Majesty's Government would deeply regret that the pursuit of fur-seals on the high seas by British vessels should involve even the slightest injury to the people of the United States. If the case be proved, they will be ready to consider what measures can be properly taken for the remedy of such injury, but they would be unable on that ground to depart from a principle on which free commerce on the high seas depends.

"The second argument advanced by Mr. Blaine is that the 'fur-seal fisheries of Behring Sea had been exclusively controlled by the Government of Russia, without interference and without question, from their original discovery until the cession of Alaska to the United States in 1867,' and that 'from 1867 to 1886 the possession, in which Russia had been undisturbed, was enjoyed by the United States Government also without interruption or intrusion from any source."

"I will deal with these two periods separately.

"First, as to the alleged exclusive monopoly of Russia. After Russia, at the instance of the Russian-American Fur Company, claimed in 1821 the pursuits of commerce, whaling, and fishing from Behring Straits to the 51st degree of north latitude, and not only prohibited all foreign vessels from landing on the coasts and islands of the above waters, but also prevented them from approaching within 100 miles thereof, Mr. Quincy Adams wrote as follows to the United States minister in Russia :

"'The United States can admit no part of these claims ; their right of navigation and fishing is perfect, and has been in constant exercise from the earliest times throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions.'

"That the right of fishing thus asserted included the right of killing fur-bearing animals is shown by the case of the United States brig *Loriot*. That vessel proceeded to the waters over which Russia claimed exclusive jurisdiction for the purpose of hunting the sea-otter, the killing of which is now prohibited by the United States statutes applicable to the fur-seal, and was forced to abandon her voyage and leave the waters in question by an armed vessel of the Russian navy. Mr. Forsyth, writing on the case to the American minister at St. Petersburg on the 4th of May, 1837, said :

"It is a violation of the rights of the citizens of the United States, immemorially exercised and secured to them as well by the law of nations as by the stipulations of the first article of the convention of 1824, to fish in those seas, and to resort to the coast for the prosecution of their lawful commerce upon points not already occupied.

"From the speech of Mr. Sumner when introducing the question of the purchase of Alaska to Congress, it is equally clear that the United States Government did not regard themselves as purchasing a monopoly. Having dealt with fur-bearing animals, he went on to treat of fisheries, and after alluding to the presence of different species of whales in the vicinity of the Aleutians said: 'No sea is now *mare clausum ;* all of these may be pursued by a ship under any flag, except directly on the coast or within its territorial limit.'

"I now come to the statement that from 1867 to 1886 the possession was enjoyed by the United States with no interruption and no intrusion from any source. Her Majesty's Government cannot

but think that Mr. Blaine has been misinformed as to the history of the operations in Behring Sea during that period.

"The instances recorded in Inclosure 1 in this dispatch are sufficient to prove from official United States sources that from 1867 to 1886 British vessels were engaged at intervals in the fur-seal fisheries with the cognizance of the United States Government. I will here by way of example quote but one.

"In 1872 Collector Phelps reported the fitting out of expeditions in Australia and Victoria for the purpose of taking seals in Behring Sea, while passing to and from their rookeries on St. Paul and St. George Islands, and recommended that a steam-cutter should be sent to the region of Oonimak Pass and the islands of St. Paul and St. George.

"Mr. Secretary Boutwell informed him, in reply, that he did not consider it expedient to send a cutter to interfere with the operations of foreigners, and stated: 'In addition, I do not see that the United States would have the jurisdiction, or power to drive off parties going up there for that purpose, unless they made such attempt within a marine league of the shore.'

"Before leaving this part of Mr. Blaine's argument, I would allude to his remark that 'vessels from other nations passing from time to time through Behring Sea to the Arctic Ocean in pursuit of whales have always abstained from taking part in the capture of seals,' which he holds to be proof of the recognition of rights held and exercised first by Russia and then by the United States.

"Even if the facts are as stated, it is not remarkable that vessels pushing on for the short season in which whales can be captured in the Arctic Ocean, and being fitted specially for the whale fisheries, neglected to carry boats and hunters for fur-seals or to engage in an entirely different pursuit.

"The whalers, moreover, pass through Behring Sea for the fishing grounds in the Arctic Ocean in April and May as soon as the ice breaks up, while the great bulk of the seals do not reach the Pribylov Islands till June, leaving again by the time the closing of the ice compels the whalers to return.

"The statement that it is 'a fact now held beyond denial or doubt that the taking of seals in the open sea rapidly leads to their extinction' would admit of reply, and abundant evidence could be adduced on the other side. But as it is proposed that this part of the question should be examined by a committee to be

appointed by the two Governments, it is not necessary that I should deal with it here.

"Her Majesty's Government do not deny that if all sealing were stopped in Behring Sea except on the islands in possession of the lessees of the United States, the seal may increase and multiply at an even more extraordinary rate than at present, and the seal fishery on the island may become a monopoly of increasing value; but they cannot admit that this is sufficient ground to justify the United States in forcibly depriving other nations of any share in this industry in waters which, by the recognized law of nations, are now free to all the world.

"It is from no disrespect that I refrain from replying specifically to the subsidiary questions and arguments put forward by Mr. Blaine. Till the views of the two Governments as to the obligations attaching, on grounds either of morality or necessity, to the United States Government in this matter, have been brought into closer harmony, such a course would appear needlessly to extend a controversy which Her Majesty's Government are anxious to keep within reasonable limits.

"The negotiations now being carried on at Washington prove the readiness of Her Majesty's Government to consider whether any special international agreement is necessary for the protection of the fur-sealing industry. In its absence they are unable to admit that the case put forward on behalf of the United States affords any sufficient justification for the forcible action already taken by them against peaceable subjects of Her Majesty engaged in lawful operations on the high seas.

"'The President,' says Mr. Blaine, 'is persuaded that all friendly nations will concede to the United States the same rights and privileges on the lands and in the waters of Alaska which the same friendly nations always conceded to the Empire of Russia.'

"Her Majesty's Government have no difficulty in making such a concession. In strict accord with the views which, previous to the present controversy, were consistently and successfully maintained by the United States, they have, whenever occasion arose, opposed all claims to exclusive privileges in the non-territorial waters of the Behring Sea. The rights they have demanded have been those of free navigation and fishing in waters which, previous to their own acquisition of Alaska, the United States declared to be free and open to all foreign vessels.

"That is the extent of their present contention and they trust

that, on consideration of the arguments now presented to them, the United States will recognize its justice and moderation.

"I have to request that you will read this dispatch to Mr. Blaine and leave a copy of it with him should he desire it.

"I am, etc.,

PROTEST.

"(Received June 14, 12.35, 1890.)

"The undersigned, Her Britannic Majesty's envoy extraordinary and minister plenipotentiary to the United States of America, has the honor, by instruction of his Government, to make to the Hon. James G. Blaine, Secretary of State of the United States, the following communication :

"Her Britannic Majesty's Government have learned with great concern from notices which have appeared in the press, and the general accuracy of which has been confirmed by Mr. Blaine's statements to the undersigned, that the Government of the United States have issued instructions to their revenue cruisers about to be despatched to Behring Sea, under which the vessels of British subjects will again be exposed, in the prosecution of their legitimate industry on the high seas, to unlawful interference at the hands of American officers.

"Her Britannic Majesty's Government are anxious to co-operate to the fullest extent of their power with the Government of the United States in such measures as may be found to be expedient for the protection of the seal fisheries. They are at the present moment engaged in examining, in concert with the Government of the United States, the best method of arriving at an agreement upon this point. But they cannot admit the right of the United States of their own sole motion to restrict for this purpose the freedom of navigation of Behring Sea, which the United States have themselves in former years convincingly and successfully vindicated, nor to enforce their municipal legislation against British vessels on the high seas beyond the limits of their territorial jurisdiction.

"Her Britannic Majesty's Government are therefore unable to pass over without notice the public announcement of an intention on the part of the Government of the United States to renew the acts of interference with British vessels navigating outside the

territorial waters of the United States, of which they have previously had to complain.

"The undersigned is in consequence instructed formally to protest against such interference, and to declare that Her Britannic Majesty's Government must hold the Government of the United States responsible for the consequences that may ensue from acts which are contrary to the established principles of international law.

"JULIAN PAUNCEFOTE.

"JUNE 14, 1890."

In a very long despatch to Sir Julian Pauncefote, under date of June 30, 1890, Mr. Blaine replied to Lord Salisbury's despatch of May 22. He undertook to prove that the protests of John Quincy Adams and of the British government against the ukase of the Emperor Alexander, in 1821, had no reference to the Behring Sea, but only to the northwest coast between the 50th and 60th degrees of north latitude; and that the treaties of the two governments with Russia in 1824 and 1825 respectively, "left the Behring Sea and all its coasts and islands precisely as the ukase of Alexander in 1821 left them, that is with a prohibition against any vessel approaching nearer to the coast than one hundred Italian miles, under danger of confiscation."

In speaking of the ukase of 1821, Mr. Blaine said further:—

"It did not, as so many suppose, declare the Behring Sea to be *mare clausum*. It did declare that the waters, to the extent of 100 miles from the shores, were reserved for the subjects of the Russian Empire. Of course many hundred miles east and west, and north and south, were thus intentionally left by Russia for the whale fishery and for fishing open and free to the world, of which other nations took large advantage. Perhaps in pursuing this advantage foreigners did not always keep 100 miles from the shore, but the theory of right on which they conducted their business unmolested was that they observed the conditions of the ukase.

"But the 100-mile restriction performed the function for which it was specially designed in preventing foreign nations from molesting, disturbing, or by any possibility sharing in the fur trade. * * * while, therefore, there may have been a large amount of lawful whaling and fishing in the Behring Sea, the

taking of furs by foreigners was always and under all circumstances illicit. * * *

"During all the time elapsing between the treaty of 1825 and the cession of Alaska to the United States in 1867, Great Britain never affirmed the right of her subjects to capture fur-seal in the Behring Sea ; and as a matter of fact, her subjects did not, during that long period, attempt to catch seals in Behring Sea. * * *" —(*H. R. Ex. Doc., No.* 450., 51*st Cong., 1st Sess., p.* 78.

On the 2d of August, 1890, Lord Salisbury replied at great length in a despatch to Sir Julian Pauncefote, denying Mr. Blaine's conclusions on all points, and adducing a mass of evidence to sustain his arguments.—(*Ex. Doc., No.* 144, *H. R.,* 51*st Cong., 2d Sess., p.* 2.)

On the 17th of December, 1890, Mr. Blaine replied in a letter to Sir Julian Pauncefote:—

"Great Britain contends that the phrase Pacific Ocean," as used in the treaties, was intended to include, and does include, the body of water which is now known as the Behring Sea. The United States contends that the Behring Sea was not mentioned, or even referred to, in either treaty, and was in no sense included in the phrase 'Pacific Ocean.' If Great Britain can maintain her position that the Behring Sea at the time of the treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the Government of the United States has no well-grounded complaint against her. If, on the other hand, this Government can prove beyond all doubt that the Behring Sea, at the date of the treaties, was understood by the three signatory Powers to be a separate body of water, and was not included in the phrase 'Pacific Ocean,' then the American case against Great Britain is great and undeniable.

"The dispute prominently involves the meaning of the phrase 'northwest coast,' or 'northwest coast of America.' Lord Salisbury assumes that the 'northwest coast' has but one meaning, and that it includes the whole coast stretching northward to the Behring Straits. The contention of this Government is that by long prescription the 'northwest coast' means the coast of the Pacific Ocean south of the Alaska Peninsula, or south of the sixtieth parallel of north latitude ; or, to define it still more accurately, the coast from the northern border of the Spanish possessions, ceded to the United States in 1819, to the point where the Spanish

claims met the claims of Russia, viz., from 42° to 60° north latitude. * * * Russia practically withdrew the operation of the ukase of 1821 from the waters of the northwest coast of the Pacific Ocean, but the proof is conclusive that it was left in full force over the waters of the Behring Sea. * * * It is easy to prove from other sources that in the treaty between the United States and Russia the coast referred to was that which I have defined as the 'northwest coast' of the Pacific Ocean south of 60° north latitude, or, as the Russians for a long time believed it, 59° 3'. We have in the Department of State the originals of the protocols between our minister at St. Petersburg, Mr. Henry Middleton, and Count Nesselrode, of Russia, who negotiated the treaty of 1824. * * * We feel justified in asking His Lordship if the Government of Great Britain has uniformly illustrated these precepts by example, or whether she has not established at least one notable precedent which would justify us in making greater demands upon Her Majesty's Government touching the Behring Sea than either our necessities or our desires have ever suggested. * * * Napoleon was promptly sent by Great Britain to the island of St. Helena as a prisoner for life. Six months after he reached St. Helena the British Parliament enacted a special and extraordinary law for the purpose of making his detention more secure. * * * The statute * * * forbids them to 'hover within eight leagues of the coast of the island.' The penalty for hovering within eight leagues of the coast is the forfeiture of the ship to His Majesty the King of Great Britain, on trial to be had in London, and the offense to be the same as if committed in the county of Middlesex. * * *

"The repeated assertions that the Government of the United States demands that the Behring Sea be pronounced *mare clausum*, are without foundation. The Government has never claimed it and never desired it. It expressly disavows it. At the same time the United States does not lack abundant authority, according to the ablest exponents of International law, for holding a small section of the Behring Sea for the protection of the fur-seals. Controlling a comparatively restricted area of water for the one specific purpose is by no means the equivalent of declaring the sea, or any part thereof, *mare clausum*. Nor is it by any means so serious an obstruction as Great Britain assumed to make in the South Atlantic, nor so groundless an interference with the common law of the sea as is maintained by British authority to-day in the Indian Ocean.

"The President does not, however, desire a long postponement which an examination of legal authorities from Ulpian to Phillimore and Kent would involve. He finds his own views well expressed by Mr. Phelps, our late minister to England, when, after failing to secure a just arrangement with Great Britain touching the seal fisheries, he wrote the following in his closing communication to his own Government, September 12, 1888 :

"'Much learning has been expended upon the discussion of the abstract question of the right of *mare clausum*. I do not conceive it to be applicable to the present case.

"'Here is a valuable fishery, and a large and, if properly managed, permanent industry, the property of the nations on whose shores it is carried on. It is proposed by the colony of a foreign nation, in defiance of the joint remonstrance of all the countries interested, to destroy this business by the indiscriminate slaughter and extermination of the animals in question, in the open neighboring sea, during the period of gestation, when the common dictates of humanity ought to protect them, were there no interest at all involved. And it is suggested that we are prevented from defending ourselves against such depredations because the sea at a certain distance from the coast is free.

"'The same line of argument would take under its protection piracy and the slave trade when prosecuted in the open sea, or would justify one nation in destroying the commerce of another by placing dangerous obstructions and derelicts in the open sea near its coasts. There are many things that cannot be allowed to be done on the open sea with impunity, and against which every sea is *mare clausum;* and the right of self-defense as to person and property prevails there as fully as elsewhere. If the fish upon the Canadian coasts could be destroyed by scattering poison in the open sea adjacent with some small profit to those engaged in it, would Canada, upon the just principles of international law, be held defenseless in such a case? Yet that process would be no more destructive, inhuman, and wanton than this.

"'If precedents are wanting for a defense so necessary and so proper, it is because precedents for such a course of conduct are likewise unknown. The best international law has arisen from precedents that have been established when the just occasion for them arose, undeterred by the discussion of abstract and inadequate rules.'" (*H. R. Ex. Doc.*, No. 144, 51st Cong., 2d Sess., p. 23.)

In a despatch of February 21, 1896, Lord Salisbury continued the discussion, and refuted the argument of Mr. Blaine that the Behring Sea was not included in the phrase "Pacific Ocean."

"Our contention is," said Lord Salisbury, "that not only can it not be shown that the Government of Great Britain, at any time since 1821, has admitted the soundness of the pretension put forward by that ukase, but that it can be shown that it has categorically denied it on more than one occasion."

Again, "I am not prepared to admit the justice of Mr. Blaine's contention that the words 'Pacific Ocean' did not include Behring Sea. I believe, that in common parlance, then and now, Behring Sea was and is a part of the Pacific Ocean." A list of thirty works proving this point is appended to the despatch.—(*Sen. Ex. Doc., No.* 55, 52*d Cong.*, 1*st Sess.*, *p.* 17.)

In view of pending negotiations for the reference of the controversy to a tribunal of arbitration, the following modus vivendi was agreed to, June 15, 1891 :

MODUS VIVENDI.

1. Her Majesty's Government will prohibit, until May next, seal killing in that part of Behring Sea lying eastward of the line of demarcation described in Article No. 1 of the treaty of 1867 between the United States and Russia, " and will promptly use its best efforts to insure the observance of this prohibition by British subjects and vessels."

2. The United States Government will prohibit seal killing for the same period in the same part of Behring Sea, and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands for the subsistence and care of the natives), and will promptly use its best efforts to insure the observance of this prohibition by United States citizens and vessels.

3. Every vessel or person offending against this prohibition in the said waters of Behring Sea outside of the ordinary territorial limits of the United States, may be seized and detained by the naval or other duly commissioned officers of either of the High Contracting Parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respect-

ively belong, who shall alone have jurisdiction to try the offense and impose the penalties for the same. * * *

4. In order to facilitate such proper inquiries as Her Majesty's Government may desire to make, with a view to the presentation of the case of that Government before abitrators, and in expectation that an agreement for arbitration may be arrived at, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or to remain upon the seal islands during the present sealing season for that purpose. (*Senate Ex. Doc.*, No. 55, 52d Cong., 1st Sess., p. 46.)

A treaty for the settlement of the dispute by arbitration was concluded, February 29, 1892 which is given on page 103, *supra*.

In accordance with the 9th article, commissioners were appointed: Sir George Baden Powell and Dr. Dawson, by the English government, and Professor Mendenhall and Dr. Merriam, by the government of the United States.

In preparing its case for the tribunal of arbitration the government of the United States relied upon certain Russian documents to prove an exclusive right in the Behring Sea, exercised by Russia, and descended to the United States by the treaty of purchase. To translate these documents, a person of Russian nationality was employed who, it would seem, made wholly false translations or additions, in order to make the most favorable case for the United States. By these false documents it appeared that Russia had rigidly excluded the ships of all other nations from the seal-fisheries in the whole of Behring Sea. These falsifications were not discovered till the case had been made up; and then it was found that the original documents failed entirely to sustain the American contention.

Under the provisions of the treaty, the tribunal met in Paris in the spring of 1893. The Arbitrators were as follows:—

Baron de Courcel, France (President); Marquis Emilio Visconti-Venosta, Italy; M. Gregero W. W. Gram, Sweden and Norway; Lord Hannen, and Sir John S. D. Thompson, England; and Justice John M. Harlan, and Senator John T. Morgan, United States.

The counsel on the part of the United States were Messrs. Edward J. Phelps, James C. Carter, Frederick R. Coudert, and

Henry Blodget; on the part of England, Sir Charles Russell, Sir Richard Webster, and others.

When the evidence was before the Tribunal, it appeared that the United States had a very weak case in respect of the first two points to be considered: and this was evident indeed from the moment of the discovery of the false translations of certain Russian documents, imposed upon the government of the United States by a person employed by it. On the third point, the decision was unanimous in favor of the English contention. That being the state of the case as to the first three points, the fourth was of no weight either way.

Thus the real issue before the tribunal was upon the fifth point, that the United States had a right of property in the seals, and a further right to protect this property on the high seas, and to these points the chief weight of the American argument was directed.

On the question of property in the seals, Mr. Carter said: "The United States hold that the ownership of the islands upon which seals breed; that the habit of the seals in regularly resorting thereto and rearing their young thereon; that their going out in search of food and regularly returning thereto, and all the facts and incidents of their relation to the islands, give to the United States a property interest therein; that this property interest was claimed and exercised by Russia during the whole period of its sovereignty over the land and waters of Alaska; that England recognized that property interest so far as recognition is implied by abstaining from all interference with it during the whole period of Russia's ownership of Alaska, and during the first nineteen years of the sovereignty of the United States.

Mr. Carter argued at great length to prove, from the Civil Law and the Common Law, the right of property in animals *feræ naturæ*. He quoted Justinian, Savigny, Puffendorf, Bracton, Bowyer, Vattel, Hautefeuille, Kent, and others; and the cases of The Swans, 7 Coke, 15b; Keeble *v.* Hickeringill, 11 East, 574; Amory *v.* Flyn, 10 John., 102; Goff *v.* Kitts, 15 Wend., 550; Blades *v.* Higgs, 12 C. B. N. S., 512; Davis *v.* Powell, Willes, 1737.

On the question of the right to protect the seals on the high

seas, Mr. Phelps said, the case of the Government of United States was:

"1st. That in view of the facts and circumstances establi by the evidence, it has such a property in the Alaskan seal h as the natural product of its soil, made chiefly available b protection and expenditure, highly valuable to its people, a considerable source of public revenue, as entitles it to pres the herd from destruction in the manner complained of, b employment of such reasonable force as may be necessary.

"2d. That irrespective of the distinct right of property, in seal herd, the United States Government has for itself and fo people, an interest, an industry, and a commerce derived f the legitimate and proper use of the produce of the seal herd its territory, which it is entitled, upon all principles applicabl the case, to protect against wanton destruction by individu for the sake of the small and casual profits in that way to gained; and that no part of the high sea is or ought to be ope individuals, for the purpose of accomplishing the destructio national interests of such a character and importance.

"3d. That the United States, possessing, as they alone p sess, the power of preserving and cherishing this valuable int est, are in a most just sense the trustee thereof for the benefit mankind, and should be permitted to discharge their trust wi out hindrance."

In support of this view, Mr. Phelps quoted, Grotius Ke Twiss, etc., and the following cases: The Marianna Flora, Wheaton, 41; Church *v.* Hubbart, 2 Cranch, 287, Queen Keyn, L. R., 2 Ex. Div., 63; Rose *v.* Himely, 4 Cranch, 2 The Success, 1 Dod., 133; The Fox, Ed., 314; The Snipe, Ed., 3

After a preamble stating the case submitted for decision, t full text of the award runs as follows: (New York *Hera* August 16, 1893.):—

"We decide and determine as to the five points mentioned article 6, as to which our award is to embrace a distinct decisi upon each of them:—

"As to the first of said five points, we, Baron de Cour John M. Harlan, Lord Hannen, Sir John S. D. Thompson, M quis Emilio Visconti-Venosta and Gregero W. W. Gram, bein majority of said arbitrators, do decide as follows:—

"By the ukase of 1821 Russia claimed jurisdiction in the sea now known as Behring Sea to the extent of one hundred Italian miles from the coasts and islands belonging to her, but in the course of the negotiations which led to the conclusion of the treaty of 1824 with the United States and the treaty of 1825 with Great Britain, Russia admitted that her jurisdiction in said sea should be restricted so as to reach a cannon shot from shore. It appears, that from that time up to the time of the cession of Alaska to the United States, Russia never asserted in fact or exercised any exclusive jurisdiction in Behring Sea or any exclusive rights to the seal fisheries therein beyond the ordinary limit of territorial waters.

"As to the second of the five points, we, Baron de Courcel, John M. Harlan, Lord Hannen, Sir John S. D. Thompson, Marquis Emilio Visconti-Venosta and Gregero W. W. Gram, being a majority of said arbitrators, decide and determine that Great Britain did not recognize or concede any claim upon the part of Russia to exclusive jurisdiction as to the seal fisheries in Behring Sea outside the ordinary territorial waters.

"As to the third point, as to so much thereof as requires us to decide whether the body of water now known as Behring Sea was included in the phrase 'Pacific Ocean' as used in the treaty of 1825 between Great Britain and Russia, we unanimously decide and determine that the body of water now known as Behring Sea was included in the phrase 'Pacific Ocean' as used in said treaty.

"On the fourth point we decide and determine that all the rights of Russia to jurisdiction and to the seal fisheries passed to the United States, limited by the cession."

On the fifth point the decision of the tribunal, Justice Harlan and Senator Morgan dissenting, was as follows:—

"On the fifth point, we, Baron de Courcel, Lord Hannen, Sir John S. D. Thompson, Marquis Emilio Visconti-Venosta and Gregero W. W. Gram, being the majority of said arbitrators, decide and determine that the United States have no right to the protection of or property in the seals frequenting the islands of the United States in Behring Sea when the same are found outside the ordinary three-mile limit.

"And whereas the aforesaid determination of the foregoing question as to the exclusive jurisdiction of the United States leaves the subject in such a position that the concurrence of Great Britain is necessary to the establishment of regulations for the

proper protection and preservation of fur-seals habitually resorting to Behring Sea, we, Baron de Courcel, Lord Hannen, Marquis Emilio Visconti-Venosta and Gregero W. W. Gram, being a majority of the arbitrators, assent to the whole of the nine articles of the following regulations as necessary outside of the jurisdiction limits of the respective governments, and that they should extend over the waters hereinafter mentioned:—

"Art. 1.—The United States and Great Britain shall forbid their citizens and subjects respectively to kill, capture or pursue at any time or in any manner whatever the animals commonly called fur-seals within a zone of sixty miles around the Pribyloff Islands, inclusive of the territorial water, the miles being geographical miles, sixty to a degree of latitude.

"Art. 2.—The two governments shall forbid their citizens or subjects to kill, capture or pursue in any manner whatever during a season extending in each year from May 1 to July 31 inclusive fur-seals on the high part of the sea in that part of the Pacific Ocean inclusive of Behring Sea, situated north of the thirty-fifth degree of north latitude, or eastward of the 180th degree of longitude from Greenwich until it strikes the water boundary described in article 1 of the treaty of 1867 between the United States and Russia, following that line up to Behring Straits.

"Art. 3.—During the period of time in the waters in which fur-sealing is allowed only sailing vessels shall be permitted to carry on or take part in fur-sealing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars or sails, as are in common use as fishing boats.

"Art. 4.—Each sailing vessel authorized to carry on fur-sealing must be provided with a special license issued for the purpose by its government. Each vessel so employed shall be required to carry a distinguishing flag prescribed by its government.

"Art. 5.—The masters of vessels engaged in fur-sealing shall enter accurately in an official log-book the date and place of each operation, the number and the sex of the seals captured daily. These entries shall be communicated by each of the two governments to each other at the end of each season.

"Art. 6.—The use of nets, firearms or explosives is forbidden in fur-sealing. This restriction shall not apply to shotguns when such are used in fishing outside of Behring Sea during the season when such may lawfully be carried on.

"Art. 7.—The two governments shall take measures to control

the fitness of the men authorized to engage in sealing. These men shall have been proved fit to handle with sufficient skill the weapons by means of which seal fishing is carried on.

"Art. 8.—The preceding regulations shall not apply to Indians dwelling on the coast of the territories of the United States or Great Britain carrying on fur-sealing in canoes or undecked boats not transported by or used in connection with other vessels and propelled wholly by paddles, oars or sails, and manned by not more than five persons, in the way hitherto practised by the Indians, provided that such Indians are not employed by other persons, and provided that when so hunting in canoes or undecked boats the Indians shall not hunt fur-seals outside the territorial waters under contract to deliver skins to anybody. This exemption is not to be construed to affect the municipal law of either country, nor shall it extend to the waters of Behring Sea or the waters around the Aleutian Islands. Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connection with sealing vessels as heretofore.

"Art. 9.—The concurrent regulations hereby determined with a view to the protection and preservation of the fur-seals shall remain in force until they have been wholly or in part abolished or modified by a common agreement between the United States and Great Britain. Said concurrent regulations shall be submitted every five years to a new examination in order to enable both governments to consider whether in the light of past experience there is occasion to make any modification thereof."

The arbitrators make a special finding on the facts agreed upon by the agents of both governments with reference to the seizure of British vessels in Behring Sea in 1887 and 1889. In addition the arbitrators make certain suggestions to the two governments, the most important being that they should come to an understanding to prohibit the killing of seals on land or sea for a period of from one to three years, and should enact regulations to carry out the findings of the arbitrators.

"And whereas the Government of her Britannic Majesty did submit to the Tribunal of Arbitration by Article VII. of the said treaty certain questions of fact involved in the claims referred to in the said Article VIII., and did also submit to us the said Tribunal a statement of the said facts as follows, that is to say:—
'*Findings of fact proposed by the agent of Great Britain and agreed to as proved by the agent for the United States and submitted to the Tribunal of Arbitration for its consideration.*'

"1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews respectively mentioned in the schedule to the British case, pages 1 to 60 inclusive, were made by the authority of the United States Government. The questions as to the value of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the schedule to the British case or any of them were wholly or in part the actual property of citizens of the United States have been withdrawn from and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States Government to pay the amounts mentioned in the schedule to the British case;

"2. That the seizures aforesaid, with the exception of the *Pathfinder*, seized at Neah Bay, were made in Behring Sea at the distances from shore mentioned in the schedule annexed hereto marked 'C';

"3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the commanders of which had, at the several times when they were made, from the Executive Department of the Government of the United States instructions, a copy of one of which is annexed hereto marked 'A,' and the others were in all substantial respects the same; that in all the instances in which proceedings were had in the district Courts of the United States resulting in condemnation such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto marked 'B,' and that the libels in the other proceedings were in all substantial respects the same; that the alleged acts or offences for which the said several searches and seizures were made were in each case done or committed in Behring Sea at the distances from shore aforesaid; and that in each case in which sentence of condemnation was passed, except in those cases where the vessels were released after condemnation, the seizure was adopted by the Government of the United States; and in those cases in which the vessels were released the seizure was made by the authority of the United States; that the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea at the distances from the shore aforesaid;

"4. That the several orders mentioned in the schedule annexed hereto, and marked 'C,' warning vessels to leave or not to enter

Behring Sea were made by public armed vessels of the United States, the commanders of which had at the several times when they were given like instructions as mentioned in finding 3; and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States;

"5. That the district Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the schedule to the case of Great Britain—pages 1 to 60 inclusive—had all the jurisdiction and powers of Courts of Admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel."

ANNEX A.

"Treasury Department, Office of the Secretary, Washington, April 21, 1886.

"Sir,—Referring to department letter of this date directing you to proceed with the revenue steamer *Bear* under your command to the seal islands, etc., you are hereby clothed with full power to enforce the law contained in the provisions of section 1,956 of the United States Revised Statutes, and directed to seize all vessels and arrest and deliver to the proper authorities any or all persons whom you may detect violating the law referred to after due notice shall have been given. You will also seize any liquors or firearms attempted to be introduced into the country without proper permit, under the provisions of section 1,955 of the Revised Statutes and the Proclamation of the President dated February 4, 1870.

"C. S. FAIRCHILD, Acting Secretary.

"Captain M. A. Healy, commanding revenue steamer *Bear*, San Francisco, California."

ANNEX B.

"In the District Court of the United States for the District of Alaska.

"August Special Term, 1886.

"To the Honorable Lafayette Dawson, Judge of said District Court.

"The libel of information of M. D. Ball, Attorney for the United States for the district of Alaska, who prosecutes on be-

half of said United States, and being present here in Court in his proper person in the name and on behalf of the said United States, against the schooner *Thornton*, her tackle, apparel, boats, cargo, and furniture, and against all persons intervening for their interest therein in a cause of forfeiture, alleges and informs as follows :—

" That Charles A. Abbey, an officer in the revenue marine service of the United States and on special duty in the waters of the district of Alaska heretofore, to wit, on the 1st day of August, 1886, within the limits of Alaska territory and in the waters thereof and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the said district, on waters navigable from the sea by vessels of ten or more tons burden, seized the ship or vessel commonly called a schooner, the *Thornton*, her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said attorney unknown, as forfeited to the United States for the following causes:—' That the said vessel or schooner was found engaged in killing fur-seal within the limits of Alaska territory and in the waters thereof in violation of section 1,956 of the Revised Statutes of the United States.' And the said attorney saith that all and singular the premises are and were true and within the Admiralty and maritime jurisdiction of this Court, and that, by reason thereof and by force of the statutes of the United States in such cases made and provided, the aforementioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture, became and are forfeited to the use of the said United States, and that the said schooner is now within the district aforesaid ;

" Wherefore the said attorney prays that the usual process and monition of this honorable Court issue in this behalf, and that all persons interested in the beforementioned and described schooner or vessel may be cited in general and special to answer the premises, and, all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture may, for the cause aforesaid and others appearing, be condemned by the definite sentence and decree of this honorable Court as forfeited to the use of the said United States, according to the form of the statute of the said United States in such cases made and provided.

" M. D. BALL, United States District Attorney for the District of Alaska."

ANNEX C.

"The following table shows the names of the British sealing vessels seized or warned by United States Revenue cruisers, 1886–1890, and the approximate distance from land when seized. The distance assigned in the cases of the *Carolena*, *Thornton*, and *Onward* are on the authority of the United States Naval Commander Abbey (see 50th Congress, 2d Session, Senate, Executive Documents, No. 106, pp. 20, 30, 40). The distances assigned in the cases of the *Anna Beck*, *W. P. Sayward*, *Dolphin*, and *Grace* are on the authority of Captain Shepard, U. S. R. M. (Blue Book, United States, No. 2, 1890, pp. 80–82, see Appendix, Vol. III.) :—

Name of Vessel.	Date of Seizure.	Approximate Distance from Land when Seized.	United States Vessel making Seizures.
Carolena	Aug. 1, 1886	75 miles	Corwin
Thornton	Aug. 1, 1886	70 miles	Corwin
Onward	Aug. 2, 1886	115 miles	Corwin
Favorite	Aug. 2, 1886	Warned by Corwin in about the same position as Oward	
Anna Beck.. ..	July 2, 1887	66 miles	Rush
W. P. Sayward ..	July 9, 1887	59 miles	Rush
Dolphin	July 12, 1887	40 miles	Rush
Grace..	July 17, 1887	96 miles	Rush
Alfred Adams ..	Aug. 10, 1887	62 miles	Rush
Ada	Aug. 25, 1887	15 miles	Bear
Triumph	Aug. 4, 1887	Warned by Rush not to enter Behring Sea	
Juanita	July 31, 1889	66 miles	Rush
Pathfinder	July 29, 1889	50 miles	
Triumph	July 11, 1889	Order out of Behring Sea by Rush—(?) as to position when warned	
Black Diamond ..	July 11, 1889	35 miles	Rush
Lily	Aug. 6, 1889	65 miles	Rush
Ariel	July 30, 1889	Ordered out of Behring Sea by Rush	
Kate	Aug. 13, 1889	Ditto	
Minnie	July 15, 1889	65 miles	Rush
Pathfinder	March 27, 1890	Seized in Neah Bay [1]	

[1] "Neah Bay is in the State of Washington and the Pathfinder was seized there on charge made against her in Behring Sea in the previous year. She was released two days later."

"And whereas the Government of Her Britannic Majesty did ask the said arbitrators to find the said facts as set forth in the said statement; and whereas the agent and counsel for the United States Government thereupon in our presence informed us that the said statement of facts was sustained by the evidence, and that they had agreed with the agent and counsel for Her Britannic Majesty that we, the Arbitrators, if we should think fit so to do, might find the said statement of facts to be true.

"Now we, the said Arbitrators, do unanimously find the facts, as set forth in the said statement, to be true:

"And whereas each and every question which has been considered by the Tribunal has been determined by a majority of all the Arbitrators,

"Now we, Baron de Courcel, Lord Hannen, Mr. Justice Harlan, Sir John Thompson, Senator Morgan, the Marquis Visconti-Venosta, and M. Gregero Gram, the respective minorities not withdrawing their votes, do declare this to be the final decision and award in writing of this Tribunal in accordance with the treaty.

"Made in duplicate at Paris, and signed by us the 15th day of August, in the year 1893.

"And we do certify this English version thereof to be true and accurate.

"The Arbitrators then append the following declarations referred to the Governments of the United States and Great Britain for their consideration.

"1. The Arbitrators declare that the concurrent regulations as determined upon by the Tribunal of Arbitration by virtue of Article VII. of the Treaty of the 29th of February, 1892, being applicable to the high sea only should, in their opinion, be supplemented by other regulations applicable within the limits of the sovereignty of each of the two powers interested and to be settled by their common agreement.

"2. In view of the critical condition to which it appears certain that the race of fur-seals is now reduced in consequence of circumstances not fully known, the Arbitrators think fit to recommend both Governments to come to an understanding in order to prohibit any killing of fur-seals, either on land or at sea, for a period of two or three years, or at least one year subject to such exceptions as the two Governments might think proper to admit of.

"Such a measure might be recurred to at occasional intervals if found beneficial.

"The Arbitrators declare, moreover, that, in their opinion, the

carrying out of the regulations determined upon by the Tribunal of Arbitration should be assured by a system of stipulations and measures to be enacted by the two Powers, and that the Tribunal must in consequence leave it to the two Powers to decide upon the means for giving effect to the regulations determined upon by it.

"We do certify this English version to be true and accurate, and have signed the same at Paris this 15th day of August, 1893."[1]

[1] The history of the Behring Sea controversy may be found in full in the U. S. Executive Documents referred to above, and in the U. S. Foreign Relations (annual volumes) from 1886 to 1893.

The proceedings of the Tribunal of Arbitration contain the cases and counter cases of the two governments, and the arguments of counsel.

The *Journal des Débats* said, after the decision :—"If on the main question the United States has been nonsuited, the precautions taken to prevent the destruction of the seals has been well received on the other side of the Atlantic. Two parties, each congratulating itself on the decision of the Judges, is a spectacle seen too seldom not to be agreeable. It affords us peculiar satisfaction, when we consider the great interest at stake, to think that France, which presided at these solemn assizes, has been able to contribute her share to the result, which is as rare as it is reassuring."

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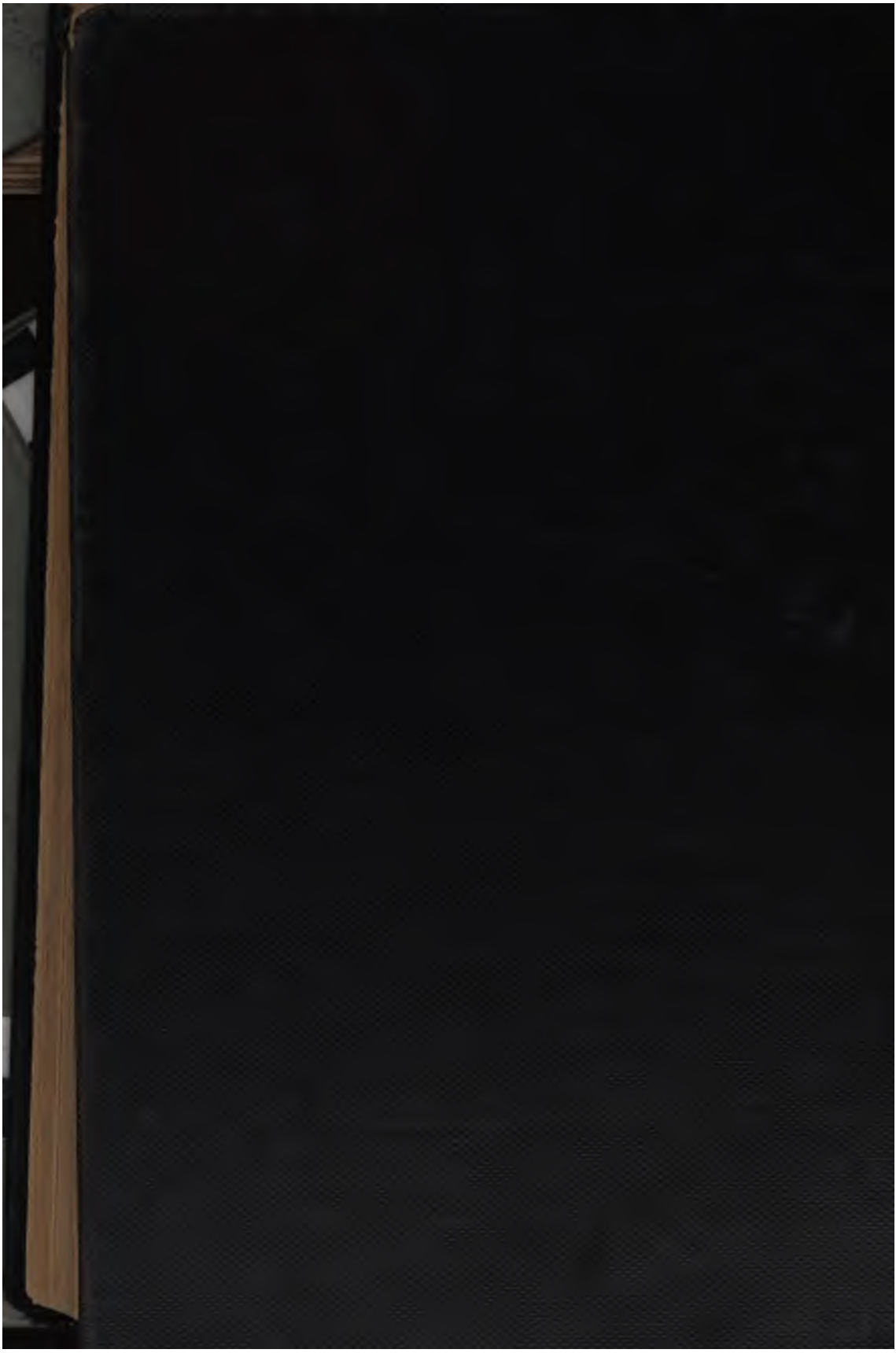
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